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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 723

DOUGLAS ROSE, ANDREW MCLEAN, DAVID SAMUEL PULLEY, et al.,

Petitioners

v.

HARRIETT COTTON MILLS AND HENDERSON COTTON MILLS,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

BENJAMIN WYLE
2 Park Avenue
New York, New York

W. M. NICHOLSON
Johnston Building
Charlotte, North Carolina

JAMES J. BANIGHAN
Elkin, North Carolina

JAMES R. LEDFORD
L. GLEN LEDFORD
Law Building
Charlotte, North Carolina
Counsel for Petitioners

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. .....

DOUGLAS ROSE, ANDREW MEDLIN, DAVID SAMBO PULLEY, et al.,

Petitioners

v.

HARRIETT COTTON MILLS AND HENDERSON COTTON MILLS,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

There are five separate records included in this petition. Reference to each record is designated as follows:

DR—Douglas Rose Record (No. 385 below).
AM—Andrew Medlin Record (No. 386 below).
Pulley—David Sambo Pulley Record (No. 388 below).
Pegram—Calvin Pegram Record (No. 390 below)
LN—Linvel Nelson Record (No. 391 below).

Douglas Rose, Leonard Barham, Charlie C. Harris, Dorsey Eatman and Wayne Vick in (No. 385 below), Luke Hamm, Leonard Barham, Carl Neal, Bennie Edwards, Hilton Parrish and Andrew Medlin in (No. 386 below), David Samuel Pulley and William Choplin in (No. 388 below), Calvin Pegram in (No. 390 below), and Linvel Nelson in (No. 391 below) pray that writ of certiorari issue to review the judgments of the Supreme Court of

North Carolina affirming judgments of the Superior Court of Vance County finding petitioners in contempt of court and imposing sentences of fine and imprisonment for alleged contempt of a temporary restraining order issued without notice in a labor dispute.

Copies of judgments of Superior Court of Vance County, North Carolina, and decisions and judgments of Supreme Court of North Carolina are included in Appendix filed herewith. Copy of portion of brief filed by petitioners on appeal to Supreme Court of North Carolina is filed as Exhibit.

Opinions Below

The opinions of the Supreme Court of North Carolina appear as follows:

No. Below	Citation	Record
385	251 N.C. 218, 111 S.E. 2d 457	DR R. p. 201
386	251 N.C. 231, 111 S.E. 2d 465	AM R. p. 138
388	251 N.C. 248, 111 S.E. 2d 467	Pulley R. p. 85
390	251 N.C. 254, 111 S.E. 2d 480	Pegram R. p. 53
391	251 N.C. 335, 111 S.E. 2d 484	LN R. p. 81

Jurisdiction

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257 (3). The decisions of the Supreme Court of North Carolina were rendered and final judgments were entered on the following dates: DR (No. 385 below), AM (No. 386 below), Pulley (No. 388 below), and Pegram (No. 390 below) on November 25, 1959; LN (No. 391 below) on December 2, 1959. Stays of execution were granted by the Supreme Court of North Carolina by orders entered on December 7, 1959, providing for stays of execution on the judgments pending the filing by petitioners of petitions for certiorari in this Court within the time prescribed by law and the disposition made thereof, and further providing that petitioners remain at

liberty under bond pending the final determination of these actions.

The petitioners contend that in the contempt proceedings in the Superior Court of Vance County, North Caroline, wherein each of the petitioners was found guilty of contempt of court for alleged violation of a labor dispute restraining order resulting in sentences of fine and imprisonment, petitioners were denied due process of law in violation of the due process clause of the Fourteenth Amendment for the reason that in these contempt proceedings, which were based on alleged acts committed out of the presence of the court, the findings of guilty and judgment of the trial court as to each petitioner were predicated upon *ex parte* affidavits of various persons and the petitioners were denied the right of confrontation of witnesses against them. This contention was urged in the Supreme Court of North Carolina, both in the written briefs and arguments of the cases in that Court. The decisions below as to whether or not petitioners were denied due process of law are, therefore, reviewable by writ of certiorari under 28 U. S. C. 1257 (3).

The jurisdiction of the Court more fully appears from the statement and reasons for granting the writ.

Question Presented

Whether a defendant in a State Court proceeding for alleged violation of a labor dispute temporary restraining order waives his right under the due process clause of the Fourteenth Amendment to confrontation of witnesses against him by failing specifically to demand at the hearing of the matter that the witnesses against him be brought into court in order that he might be confronted with and cross-examine them, and the trial court proceeds to findings of guilty and imposition of sentence based on *ex parte* affidavits of such witnesses.

Constitutional Provisions Involved

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." *Fourteenth Amendment to the Constitution of the United States*, United States Code, 1958 Edition, Page XLVII.

Statement

Textile Workers Union of America (AFL-CIO), a labor organization representing respondents' employees engaged in a strike at the respondents' plants in Henderson, North Carolina, beginning on November 15, 1958. Local Union No. 578, Textile Workers Union of America (AFL-CIO) is the Local Union of employees of the respondent Harriet Cotton Mills, and Local Union No. 584, Textile Workers Union of America (AFL-CIO) is the Local Union of employees of the respondent Henderson Cotton Mills. Respondents did not attempt to operate their plants until early February of 1959. On February 13, 1959, each of the respondents instituted action in the Superior Court of Vance County against the Textile Workers Union of America (AFL-CIO) and the Local Unions representing the employees of their respective plants as well as certain named individuals, in which actions the respondents asserted inadequate legal remedies and requested injunctive relief against certain alleged conduct on the part of the defendants named in the respective actions consisting of acts designed to interfere with the operation of respondents' plants. DR R. p. 19, AM R. p. 19, Pulley R. p. 19, Pegram R. p. 16, LN R. p.

16. On the same day, February 13, 1959, there was issued without notice to the defendants a temporary restraining order prohibiting and regulating certain anticipated activities of the defendants named therein and "all other persons to whom notice and knowledge of this action may come". DR R. p. 30, AM R. p. 29, Pulley R. p. 30, Pegram R. p. 23, LN R. p. 25.

The petitioners Douglas Rose, Charlie C. Harris, Dorsey Eatman, Carl Neal, Bennie Edwards, Hilton Parrish, Andrew Medlin, David Samuel (Sambo) Pulley, William Choplin and Linvel Nelson were named as defendants in the respondents' original actions and in the temporary restraining order, and copies of the summons and complaint and temporary restraining order were served on them by the Sheriff of Vance County. DR R. p. 40, AM R. p. 42, Pulley R. p. 44, LN R. p. 34. The petitioners Leonard Barham, Wayne Vick, Luke Hamm and Calvin Pegram were not named as defendants in either the original actions or in the temporary restraining order and were not served with either the summons and complaint or temporary restraining order.

Thereafter, show cause orders issuing from the Superior Court of Vance County, North Carolina, together with the affidavits of various persons were served on the petitioners ordering them to appear at the time stated in the order pertaining to each petitioner, and show cause why he should not be adjudged in contempt of court for acts alleged to have been committed in violation of the temporary restraining order. DR R. p. 50, AM R. p. 45, Pulley R. p. 52, Pegram R. p. 36, LN R. p. 42. Answers were filed by the petitioners denying the contumacious acts alleged and denying violation of the temporary restraining order. DR R. p. 53, AM R. p. 57, Pulley R. p. 54, Pegram R. p. 38, LN R. p. 44. When the hearings in the various contempt proceedings were held, the respondents (plaintiffs in trial court) in each case intro-

duced into evidence the original complaint with sheriff's return as to service thereof, the temporary restraining order with sheriff's return as to service thereof, the order making the temporary restraining order permanent, the motion or petition for show cause order with affidavits attached, and the order to show cause with sheriff's return as to service thereof. DR R. p. 58, AM R. p. 65, Pulley R. p. 56, Pegram R. p. 39, LN R. p. 46. This, and particularly the *ex parte* affidavits of various persons which were received into evidence to prove the alleged contumacious acts of the petitioners, constituted the entire evidence offered by the respondents (plaintiffs in trial court), DR R. pp. 58-59, AM R. pp. 67-78, Pulley R. pp. 56-62, Pegram R. pp. 39-42, LN R. pp. 46-50, except that in addition to the above mentioned, two witnesses in the case of Local Union No. 578, *Luke Hamm, et al.*, v. *Harriet Cotton Mills*, (No. 386 below) and one witness in the case of Local Union No. 578, *David Samuel Pulley, et al.*, v. *Harriet Cotton Mills*, (No. 388 below) testified at the hearings in those cases and were cross-examined by petitioners. Petitioners made no specific request to the trial court at the hearing of these cases for the granting of their right to be confronted with the witnesses against them, but did request and receive permission to present their own evidence by oral testimony. The petitioners did contend on appeal to the Supreme Court of North Carolina that the judgments holding them in contempt should be reversed because the affidavits offered to support the findings of fact were incompetent and should have been rejected by the trial court *sua sponte* since proof by that manner constituted a denial of due process guaranteed by both State and Federal Constitutions, and that since the conduct amounted to criminal contempt proof of the charges by the affidavits deprived petitioners of confrontation and cross-examination, rights guaranteed by both State and Federal Constitutions.

The Supreme Court of North Carolina held that ". . . the 'law of the land' guaranteed by Article I, Section 17 of our Constitution, synonymous with due process of law (under the Fourteenth Amendment to the Constitution of the United States), guarantees to one charged with contempt of court by an asserted willful violation of a restraining order a right, when he denies the asserted violation, to confront and cross-examine witnesses by whose testimony the asserted violation is to be established."; but that "If appellants wished to challenge the evidence offered for the purpose of establishing their guilt, they should have objected when the evidence was offered", and that petitioners waived their right to confrontation by failing to make a timely assertion of the right. *Cotton Mills* v. *Local 578, et al.*, 251 NC 218, 111 S.E. 2d 457, DR R. p. 201.

Since the question as to denial of due process of law was identical in all of the cases, the Supreme Court of North Carolina did not discuss this question in detail in any of the cases other than *Cotton Mills* v. *Local 578, et al.*, *supra*, but referred to the opinion in that case as authority for affirming the findings of guilty and sentences imposed in the other cases.

Reasons for Granting the Writ

The question in these cases raises a substantial federal question which has been decided adversely to the petitioners in the North Carolina Supreme Court and is a question not heretofore passed upon by this Court.

Not only is a determination of the constitutional right as to confrontation by witnesses against them of immediate vital importance to petitioners, who were charged with and convicted of contempt of court for alleged violation of a temporary restraining order by acts committed out of the presence of the court, but such a determination by this Court would clarify one other aspect

of federal constitutional rights under the Fourteenth Amendment as it pertains to state court proceedings for contempt which, because of the varied procedures, practices and denomination of contempts in the various state courts, litigants, their attorneys, and the courts in such proceedings are often left in confusion as to the nature and extent of such rights. And the declaration and clarification of such rights is needed because what was at one time the extraordinary writ of injunction has in recent years become, in some state courts, a commonplace process for the attempted resolution of labor disputes. Unfortunately, in such disputes, unjustifiable violence on the part of both pro-union and anti-union forces sometimes occurs. No contention is made here, nor was such contention made in the state courts, that persons guilty of offenses against the laws of the state should not be punished for such violations. It is felt that the better practice would be to treat such violations simply as criminal offenses with trial in the criminal courts, and that proceedings for injunctive relief in such situations is of doubtful wisdom since experience has indicated that such proceedings, instituted at the instance of management and confined to alleged acts of violence on the part of pro-union forces, leaves the impression with some persons that the state and its courts have "taken sides" and serves to further charge an already electrified situation. However, such injunctive proceedings are recognized and when restraining orders are issued, they must be obeyed. The power of courts to compel obedience to their orders lawfully issued is essential to the jurisdiction and maintenance of judicial authority. *Manufacturing Co.* v. *Arnold*, 228 N.C. 375, 45 S.E. 2d 368.

Although the petitioners in these cases have, at every stage of the cases, protested their innocence of the contemptuous acts charged, the only question this Court may properly be asked to consider is whether or not the procedures followed in the trial court violated the petitioners'

right to confrontation of witnesses guaranteed by the Fourteenth Amendment.

The Supreme Court of North Carolina, in accordance with the decision of this Court in the case of *In re Oliver*, 333 U.S. 257, 68 S. Ct. 499, 92 L. Ed. 682, held that due process of law "guarantees to one charged with contempt of court by an asserted willful violation of a restraining order a right, when he denies the asserted violation, to confront and cross-examine witnesses by whose testimony the asserted violation is to be established.". *Cotton Mills v. Local 578, et al., supra,* DR R. p. 201. Hence, this Court will not be burdened by an extended discussion of this point.

However, the Supreme Court of North Carolina held that petitioners have waived this right by failing to make an objection to the *ex parte* affidavits offered for the purpose of establishing their guilt at the times such affidavits were offered. *Cotton Mills v. Local 578, et al., supra.*

Petitioners do not contend that a constitutional right cannot, under some circumstances, be waived. Cases holding lack of jurisdiction to review or procedural waiver of such rights may be classified as follows:

(1) Where the defendant has failed to take advantage of definitely prescribed procedures established to provide an opportunity to challenge the action in question. *Yakus v. United States*, 331 U.S. 414, 64 S. Ct. 660, 88 L. Ed. 834 (Justices Rutledge, Roberts and Murphy dissenting); *Michel v. State of Louisiana*, 350 U.S. 91, 76 S. Ct. 158, 100 L. Ed. 83 (Mr. Justice Douglas, with whom the Chief Justice and Mr. Justice Black concurred, dissenting).

(2) Where there is such a failure to comply with the rules of this Court that no federal question is presented on appeal. *Seaboard Air Line Ry. Co. v. Watson*, 287 U.S. 86, 53 S. Ct. 32, 77 L. Ed. 180, 86 A.L.R. 174.

(3) Where there is no showing that a federal question constituting an appropriate ground for review was presented in and expressly or necessarily decided by the state court. *Whitney* v. *People of California*, 274 U.S. 357, 47 S. Ct. 641, 643, 71 L. Ed. 1095; *Barbour* v. *State of Georgia*, 249 U.S. 454, 39 S. Ct. 316, 317, 63 L. Ed. 704 (holding that a federal question, first raised by defendant in an amended motion for new trial, which could not be considered by the state court under the state practice, does not present the question to the Supreme Court on writ of error); *O'Neil* v. *State of Vermont*, 144 U.S. 323, 12 S. Ct. 693, 696, 36 L. Ed. 450 (Justices Field, Harlan and Brewer dissenting).

The right to confront and cross-examine witnesses against him may, under certain circumstances, be waived by a defendant. The cases so holding may be classified as follows:

(1) Where the party who asserts that he has been deprived of the right of confrontation and cross-examination has, himself, offered the incompetent matter into evidence. *Diaz* v. *United States*, 223 U.S. 442, 32 S. Ct. 250, 56 L. Ed. 500, Ann. Cas. 1913C, 1138; *Connecticut Mutual L. Ins. Co.* v. *Hillmon*, 188 U.S. 208, 235 S. Ct. 294, 47 L. Ed. 446.

(2) Where the defendant or his counsel enters into a stipulation as to what absent witnesses would testify if present. *Diaz* v. *United States*, *supra*, 32 S. Ct. at page 252, and cases cited; *Fukunaga* v. *Territory of Hawaii*, C.C.A. 9th Circuit, 33 Fed. (2d) 396, cert. den., 280 U.S. 594, 74 L. Ed. 641.

(3) Where the defendant pleads guilty. *People ex rel Kennedy* v. *Hunt*, 13 N.Y.S. 2d 816, 257 App. Div. 1039.

(4) Where, in certain cases, accused voluntarily absents himself after trial has begun. *Diaz* v. *United States*, *supra*, 32 S. Ct., at page 254, and cases cited; *United States* v. *Barracota*, D.C.N.Y., 45 F. Supp. 38.

(5) Where a prosecution witness is absent because of the wrongful procurement of such absence by the accused, other evidence is admissible. *Reynolds* v. *United States*, 98 U.S. 145, 158, 25 L. Ed. 244, 247.

It appears clearly that none of the foregoing situations apply to the present cases.

The petitioners contend that no waiver of their constitutional right to confrontation occurred by their failure specifically to request at the trial that they be granted such right since a mere failure to assert such a fundamental right cannot be considered as a waiver of it. Contempt proceedings are governed by the ordinary rules as to admissibility of evidence. 17 C.J.S., page 111, Contempt, section 84C. At 17 C.J.S., page 112, it is stated that ". . . it has been held that a conviction for contempt based on affidavit is not a deprivation of defendant's privilege to meet his witnesses face to face (citing *O'Neil* v. *People*, 113 Ill. App. 195; *Bowden* v. *Bowden*, 198 Tenn. 143, 278 S.W. 2d 670), and that affidavits on which a warrant is issued in contempt proceedings are admissible in evidence on the hearing (*Ex parte Wenzler*, 74 P. 2d 297; *State* v. *Harris*, 14 N.D. 501; 105 N.W. 621; and *Warner* v. *Martin*, 124 Ga. 387, 52 S.E. 446, 4 Am. Cas. 480)". These cases are either distinguishable from the present cases or are in conflict with the decision of this Court in the case of *In re Oliver, supra.*

In the *Bowden* case, *supra*, 198 Tenn. 143, 278 S.W. 2d 670, the prosecuting witness was present in court and the Chancellor informed the defendant that he could cross-examine the complainant under oath if he so desired. In *Ex parte Wenzler, supra*, 74 P. 2d 297, there is no intimation that the use of affidavits was ever challenged by the defendant in either the trial or appellate court, but merely that there was a failure to show facts sufficient to constitute a contempt.

The holding in *Warner* v. *Martin*, *supra*, 124 Ga. 387, 52 S.E. 446, 4 Am. Cas. 180, that ex parte affidavits are admissible, even over objection, would not only be in conflict with the decision of the North Carolina Supreme Court on this point, but would certainly not comply with due process as to right of cross-examination declared by this Court in the case of *In re Oliver*, *supra*.

The cases of *O'Neil* v. *People*, *supra*; 113 Ill. App. 195, and *State* v. *Harris*, *supra*, 14 N.D. 501, 105 N.W. 621, would also be in conflict with the *Oliver* case insofar as they hold that the defendant is not entitled to confrontation and cross-examination of witnesses against him.

Furthermore, it is also stated in 17 C.J.S., page 112, ". . . that where a conviction for contempt might subject defendant to imprisonment, he should be tried, not on ex parte affidavits, but on oral testimony, whether the contempt is civil or criminal.", and note 88 thereunder. See also 43 C.J., page 76, note 72.

In the case of *Hotaling* v. *Superior Court*, 199 Cal. 501, 217 P. 73 at page 75, 29 A.L.R. 127, it is held that in a prosecution for constructive contempt, the affidavits on which the citation is issued constitute the complaint. The affidavits of the defendant constitute the answer or plea. The issues of fact as formed by the respective affidavits serve as pleadings. *A hearing must be held on these issues at which competent evidence must be produced* (emphasis supplied).

The North Carolina Supreme Court has previously held that the show cause order in contempt proceedings, supported by the plaintiff's affidavits, constitutes the minimum *accusatory* requirements of due process under the North Carolina statute as to contempts. *Gaylon* v. *Stutts*, 241 N.C. 120, 84 S.E. 2d 822, N.C. G.S. 5-7. The petitioners contended in the Supreme Court of North Carolina and now contend that the show cause order and sup-

porting affidavits serve no purpose other than to satisfy the accusatory requirements of due process, the same as would be accomplished by a warrant or bill of indictment—that is, to bring the petitioners within the jurisdiction of the court and apprize them of the wrong they are alleged to have committed—and that such affidavits could not be considered as competent proof of the facts constituting the alleged contempt. *Hotaling* v. *Superior Court, supra*, 191 Cal. 501, 217 P. 73; *Staley* v. *South Jersey Realty Co.*, 83 N.J. Eq. 300, 90 A. 1042, Am. Cas. 1916B, page 955.

The *Staley* case is factually very similar to the present cases insofar as the question of the competency of the affidavits is concerned. There, as in these cases, the court proceeded to findings of guilty on *ex parte* affidavits without any indication, from the decision, that the counsel for defendant made any request that plaintiff's evidence be presented by oral testimony, and the defendant, as in these cases, introduced no affidavits in his own behalf. The court said, at 90 A. 1045, "The defendant is not to be held responsible for the manner in which the case against him was conducted; his counsel waived nothing and acquiesced in nothing except as to the adverse ruling of the court on his motion for a continuance. If the incriminating witnesses had been sworn and examined as they should have been, he was there to cross-examine them or to lay the ground for their contradiction or impeachment. The *ex parte* affidavits, if known to the defendant, were not recognized by him as legal evidence; answering affidavits were not filed, hence the defendant did not even apparently acquiesce in that method of trial. We can reach therefore but one conclusion, and that is that the order sentencing the defendant to a definite term of imprisonment for a criminal contempt was made without any evidence of his guilt that was admissible in such a proceeding.".

The petitioners contend that, as was held in the *Staley* case, the effect of their trial is that they have been convicted and sentenced to a definite term of imprisonment for a criminal contempt without any evidence of their guilt that was legally admissible in such a proceeding.

Furthermore, the petitioners probably could not have waived the right to confrontation in this criminal proceeding, even had they affirmatively desired to do so, without the consent of the court, under the prior decisions of the North Carolina Supreme Court. *Cotton Mills* v. *Local 578, et al., supra*, DR R. p. 201, the court states: "'In this jurisdiction the important privilege of being present in person, so as to confront one's accusers on trial for a criminal offense, may, in felonies other than capital, be waived by the defendant himself, but not by his counsel, while in misdemeanors such waiver may be made by his counsel *with the consent of the court*'. *State* v. *Hartsfield*, 188 N.C. 357, 124 S.E. 629; *State* v. *Grundler, ante*, 177; *Cameron* v. *McDonald*, 216 N.C. 712, 6 S.E. 2d 479; *State* v. *Harris*, 181 N.C. 600, 107 S.E. 466; *State* v. *Mitchell, supra*; *Miller* v. *State*, 237 N.C. 29, cert. den., 345 U.S. 930, 97 L. Ed. 1360".

Waiver of constitutional rights should not be lightly inferred, and courts should indulge every reasonable presumption against waiver of fundamental constitutional rights. *Emspak* v. *United States*, 349 U.S. 190, 75 S. Ct. 687, 99 L. Ed. 997.

Conclusion

For the reasons stated, it is respectfully submitted that this petition for writ of certiorari should be granted.

Respectfully, submitted,

BENJAMIN WYLE
2 Park Avenue
New York, New York

W. M. NICHOLSON
Johnston Building
Charlotte, North Carolina

JAMES J. RANDLEMAN
Elkin, North Carolina

JAMES B. LEDFORD
L. GLEN LEDFORD
Law Building
Charlotte, North Carolina
Counsel for Petitioners

Petitioners' Exhibit

Portion of appellants' brief on appeal to Supreme Court of North Carolina pertaining to question of denial of due process:

ARGUMENT

II.

THAT THE RESPONDENTS WERE DENIED DUE PROCESS OF LAW BY REASON OF THE FACT THAT THEY WERE DENIED THE OPPORTUNITY TO FACE AND CROSS-EXAMINE THEIR ACCUSERS.

RESPONDENTS' EXCEPTION NO. 3

Preliminary to the discussion of the particular issue involved in this question, it is perhaps appropriate to refer to and quote at length from the very thorough and excellent summarization and classification of the various types and aspects of contempt made by Johnson, J. in the case of *Haylon* v. *Stutts*, 241 N.C. 120 (Beginning at 123), 84 S.E. 2d 822: "Contempts of court are classified in two main divisions, namely, direct or indirect, the test being whether the contempt is perpertrated within or without the presence of the court. A direct contempt consists of words spoken or acts committed in the actual or constructive presence of the court while it is in session (*State* v. *Woodfin*, 27 N.C. 199; *State* v. *Nowell*, 156 N.C. 648, 72 S.E. 590), or during recess (Ex parte *McCown*, 139 N.C. 95, 51 S.E. 957; *State* v. *Little*, 175 N.C. 743, 94 S.E. 680) which tend to subvert or prevent justice. An indirect contempt is one committed outside the presence of the court, usually at a distance from it, which tends to degrade the court or interrupt, prevent or impede the administration of justice. In re *Parker*, 177 N.C. 463,

99 S.E. 342; *Snow* v. *Hawkes*, 183 N.C. 365, 111 S.E. 62. See also 12 Am. Jur., Contempt, section 4; 17 C.J.S., Contempt, sections 3 and 4.

"Proceedings for contempt are of two classes, criminal and civil. Criminal proceedings are those brought to preserve the power and to vindicate the dignity of the court and to punish for disobedience of its processes or orders. Civil proceedings are those instituted to preserve and enforce the rights of the parties to actions and to compel obedience to orders and decrees made for the benefit of the suitors. Criminal proceedings, involving as they do offenses against the courts and organized society, are punitive in their nature, and the government, the courts, and the people are interested in their prosecution. Whereas civil proceedings, having as their underlying purpose the preservation of private rights, are primarily remedial and coercive in their nature, and are usually prosecuted at the instance of an aggrieved suitor. 12 Am. Jur., Contempt, section 6.

"With us contempts are defined and classified by two statutes; G.S. 5-1 and G.S. 5-8. These statutes recognize and preserve the fundamental distinction between civil and criminal contempt in substance but not in name. Acts or omissions which ordinarily constitute criminal contempt as defined in the textbooks are designated by our statute (G.S. 5-1) as punishable 'for contempt', without further designation; the acts or omissions which ordinarily constitute civil contempt as defined in the books are designated by our statute (G.S. 5-8) as punishable 'as for contempt'. Thus, under our statutes the proceedings for criminal and civil contempt are 'for contempt' and 'as for contempt', respectively.

"A person guilty of any of the acts or omissions enumerated in the eight subsections of GS 5-1 may be punished *for contempt*, because such acts or omissions have a direct tendency to interrupt the proceedings of the court

or to impair the respect due to its authority. Whereas a person guilty of any of the acts or omissions described in the seven subsections of GS 5-8 is punishable *as for contempt*, because such acts or omissions tend to defeat, impair, impede or prejudice the rights or remedies of a party to an action pending in court. *Luther* v. *Luther*, 234 N.C. 429, 67 S.E. 2d 345. . . . . .

"G.S. 5-5 deals with direct contempt. It provides that 'contempt committed in the immediate presence of the court may be punished summarily, but the court shall cause the particulars of the offense to be specified on the record, and a copy of the same to be attached to every commital, attachment or process in the nature of an execution founded on such judgment or order'.

"G.S. 5-7 deals with indirect contempt. It provides that 'when the contempt is not committed in the immediate presence of the court, or so near as to interrupt its business, proceedings thereupon shall be by an order directing the offender to appear, within reasonable time, and show cause why he should not be attached for contempt. . . .'.

"G.S. 5-9 provides: 'Proceedings *as for contempt* shall be by an order directing the offender to appear within a reasonable time and show cause why he should not be attached for contempt'. (Italics added)".

A proceeding for contempt for an alleged willful violation of a restraining order, as in this case, is based upon G.S. 5-1, (*Manufacturing Co.* v. *Bonano*, 242 N.C. 587 and 590, 89 S.E. 2d 116 and 115; *Manufacturing Co.* v. *Arnold*, 228 N.C. 375, 45 S.E. 2d 368) and would be a proceeding for direct contempt. *Haylon* v. *Stutts*, *supra*. If found guilty, a respondent may be punished by fine, imprisonment, or both. G.S. 5-4.

Appeal from a judgment of guilty of indirect contempt for acts committed out of the presence of the court is in

the same manner as is provided for appeals in criminal actions. G.S. 5-2.

But even though a contempt proceeding is criminal in nature (*Gaylon* v. *Stutts, supra; Manufacturing Co.* v. *Arnold, supra;* In re *Hege*, 205 N.C. 625, 172 S.E. 345; In re *Gorham*, 129 N.C. 481, 49 S.E. 311), the proceeding is not governed by rules of procedure and the law applicable to criminal prosecutions. *Manufacturing Co.* v. *Arnold, supra.* Thus it has been held that respondent is not entitled to a jury trial. *Manufacturing Co.* v. *Arnold, supra;* In re *Gorham, supra.* Furthermore, it is not necessary that a respondent was a party to the original proceeding in which the restraining order was issued or that he was formally served with a copy of the order he was charged with violating, it being sufficient if it is shown that he actually "knew that such order had been issued and knew the contents thereof at the time the prescribed acts alleged were committed. *Erwin Mills* v. *Textile Workers Union*, 234 N.C. 321; 67 S.E. 2d 372; *Hart Cotton Mills, Inc.* v. *Abrams*, 231 N.C. 431, 57 S.E. 2d 803.

The decisions from other jurisdictions are generally in accord with the holdings from this jurisdiction on the question of the lack of right to jury trial in a contempt proceeding and that a respondent may be punished without actually having been a party to the original proceeding, and no criticism is made of these holdings. The power of courts to compel obedience to their orders lawfully issued is essential to their jurisdiction and the maintenance of judicial authority. *Manufacturing Co.* v. *Arnold, supra.*

However, the respondents contend, and believe the court will agree, that proceedings designed to maintain and preserve the dignity of the courts and compel obedience to their orders can and must be consistent with certain basic and fundamental rights essential to due process. Furthermore, the respondents contend that the right to confront and cross-examine their accusers and other wit-

nesses against them is essential to due process. Art. I, section 17, of the Constitution of the State of North Carolina provides: "No person ought to be taken, imprisoned or disseized of his freehold, liberties or privileges, or outlawed or exiled, or in any manner deprived of his life, liberty or property but by the law of the land."

The "law of the land" is equivalent to "due process of law". *State* v. *Collins*, 169 N.C. 323, 84 S.E. 1049; *State* v. *Ballance*, 229 N.C. 764, 51 S.E. 2d 731.

The term "law of the land" means the general law, the law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. It means the regular course of the administration of justice through the courts of competent jurisdiction; after the manner of such courts. Procedure must be consistent with the fundamental principles of liberty and justice. *State* v. *Chesson*, 228 N.C. 259, 45 S.E. 2d 563; *Eason* v. *Spence*, 232 N.C. 579, 61 S.E. 2d 717.

In *State* v. *Ballance*, *supra*, beginning at page 768, is found the very eloquent discussion by *Ervin, J.*, of the historical and fundamental significance attached to Art. I, section 17, of our Constitution, as well as to section 29 of Art. I containing the solemn warning that "A frequent recurrence to fundamental principles is also necessary to preserve the blessings of liberty."

Art. I, section 11, of our Constitution provides: "In all criminal prosecutions, every person charged with crime has the right to be informed of the accusation and to confront the accusers and witnesses with other testimony, and to have counsel for defense, and not be compelled to give self-incriminating evidence, or to pay costs, jail fees, or necessary witness fees of the defense, unless found guilty. (Const. 1868; 1945, C-634, s.1)."

In *State* v. *Hightower*, 187 N.C. 300, *Stacy, J.*, speaking for the Court, says: "Again, it is urged that the errors assigned by the defendant are technical, minute and attenuated, but we do not so understand the record. 'A fair and full cross-examination of a witness upon the subject of his examination-in-chief is the absolute right, and not the mere privilege, of the party against whom he is called, and a denial of the right is prejudicial and fatal error.' *Sanborn, J.*, in *Mining Company* v. *Mining Company*, 129 Fed. 668. In all criminal prosecutions the defendant is clothed with a constitutional right of confrontation, and this may not be taken away any more by denying him the right to cross-examine the State's witnesses than by refusing him the right to confront his accusers and witnesses with other testimony. *Constitution*, Art. I, sec. 11. 'We take it that the word 'confront' does not simply secure to the accused the privilege of examining witnesses in his own behalf, but is an affirmance of the rule of the common law that in trials by jury the witness must be present before the jury and accused, so that he may be confronted; that is, put face to face.' *Pearson, C.J.* in *S.* v. *Thomas*, 64 N.C. 74. And, of course, includes the right of cross-examination. It is fundamental with us, and expressly vouchsafed in the bill of rights, that no man shall be 'deprived of his life, liberty, or property but by the law of the land'. *Constitution*, Art. I, sec. 17."

It might be argued that since, in contempt proceedings, the respondent is not entitled to trial by jury, the provisions as to confrontation and cross-examination guaranteed by Art. I, section 11, of our Constitution, are not available to him. However, such an argument would be construing the decisions too narrowly. Confrontation in criminal actions includes both the right to be confronted "before the jury" as well as the right of the defendant to cross-examine the witnesses against him.

And while it has been stated that the provisions as to confrontation do not apply in civil actions, what was really held was that in civil actions the party does not have the right to be confronted "before the jury", and "in such cases, it sufficiently complies with the constitutional mandate if the testimony was taken under oath in the manner prescribed by law, *with opportunity to cross-examine.*" (Emphasis added). *Chesson* v. *Container Co.*, 223 N.C. 379, 26 S.E. 2d 904.

Insofar as can be determined, there are no decision from this jurisdiction directly pertaining to the competency of affidavits in a proceeding for indirect contempt to prove the facts constituting the alleged contempt, although it is admitted that apparently it has been the practice in this State to use affidavits as proof of the things done or omitted constituting the contempt. This practice apparently has resulted through misinterpretation of G.S. 5-7, which provides: "When the contempt is not committed in the immediate presence of the court, or so near as to interrupt its business, proceedings thereon shall be by an order directing the offender to appear, within reasonable time, and show cause why he should not be attached for contempt. At the time specified in the order the person charged with contempt may appear and answer, and, if he fail to appear and show good cause why he should not be attached for the contempt charged, he shall be punished as provided in this chapter."

The cases uniformly hold that a proceeding for indirect contempt is always *based* upon affidavits or other verified pleadings setting forth facts constituting the alleged contempt, and that such affidavits or other verified allegations are required as the basis for an order to show cause. *Erwin Mills* v. *Textile Workers Union*, *supra*, and cases cited therein.

G.S. 5-7 requiring that a contempt proceeding be initiated by the issuance of a show cause order sets forth

the minimum *accusatory* requirements of due process (*Gaylon* v. *Stutts*, *supra*), and the respondents contend that this is all that G.S. 5-7 pertains to, and that the show cause order and supporting affidavits are analogous to indictments or warrants in a criminal prosecution and are limited to the purpose served by a bill of indictment or warrant; that is, to bring the accused within jurisdiction of the court and apprize him of the wrong he is alleged to have committed. The respondents further contend that the show cause order and the supporting affidavits are nothing more than accusatory in nature and cannot, consistent with due process, be considered as proof of the wrongful acts alleged. The respondents contend that should the show cause order and its supporting affidavits be considered not only as complying with the *accusatory* requirements of due process under G.S. 5-7, but also as *proof* of the wrongful acts they are alleged to have committed, they would be subject to a law which does not hear before it condemns; which proceeds without inquiry, and renders judgment without trial. And if such procedure is permitted, the respondents' basic rights under Art. I, sections 11 and 17, would be violated. Furthermore, such a proceeding would be violative of the due process clause of the Fourteenth Amendment to the Constitution of the United States.

In the case of In re *Oliver*, 333 U.S. 257, 68 S. Ct. 499, it is held that in a state court proceeding for indirect contempt for acts committed outside the presence of the court, "failure to afford the petitioner a reasonable opportunity to defend himself against the charge of false and evasive swearing, was a denial of due process. A person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense—a right to his day in court—are basic in our system of jurisprudence; and these rights include as a minimum, *a right to examine the witnesses against him*, to offer

testimony, and to be represented by counsel." (emphasis added).

For a collection of the decisions pertaining to the holdings of the United States Supreme Court relative to direct contempt and indirect contempt, see *Constitution of the United States, Annotated*, Corwin, 1953, beginning at page 1129.

The respondents therefore respectfully contend that in this proceeding they were denied the rights secured to them by Art. 1, sections 11 and 17 of the Constitution of the State of North Carolina, and were denied due process of law under the Fourteenth Amendment to the Constitution of the United States. The respondents further urge the Court to declare that in addition to the accusatory due process requirements of G.S. 5-7, as set forth in the case of *Gaylon v. Stutts, supra*, it is the law of this State that a person charged with indirect contempt for alleged acts committed out of the presence of the court is entitled to be confronted with and cross-examine his accuser and other witnesses against him, in accordance with the fundamental principles of justice and the law of the land.

FILE COPY

APPENDIX

SUPREME COURT, U.S.
FILED
FEB 21 1960
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 723

DOUGLAS ROSE, ANDREW MORRIS, DAVID SAYRE PERRY, et al.,

Petitioners,

v.

HARRIET CURTIS MOTT AND HOPKINSON CURTIS MOTT,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

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IN THE SUPREME COURT OF NORTH CAROLINA

Case No. 385

HARRIET COTTON MILLS

v.

LOCAL UNION NO. 578, TEXTILE WORKERS UNION OF AMERICA (AFL-CIO); DOUGLAS ROSE, LEONARD BARHAM, CHARLIE C. HARRIS, DORSEY EATMAN, WAYNE VICK, ET AL

OPINION—Filed November 25, 1959

1. An exception to the findings of fact and conclusions of law and the judgment of the court is a broadside exception which does not present for review the admissibility of the evidence on which the findings were made or the sufficiency of the evidence to support the findings.

2. The Supreme Court may review the merits of a cause and decide the questions sought to be presented by the appeal when the matter is of wide public interest and concern, notwithstanding that the exceptions are insufficient to present the questions.

3. A person denying his asserted violation of a restraining order in contempt proceedings has the right under the provisions of Art. I, Section 17 of the Constitution of North Carolina, synonymous with due process of law under the Federal Constitution, to confront and cross-examine witnesses by whose testimony the asserted violation is to be established.

4. In criminal as well as in civil actions a person may, subject to certain exceptions, waive a constitutional right

by express consent, by failure to assert such right in apt time, or by conduct inconsistent with the purpose to insist upon such right.

5. The right of confrontation may be waived by defendant himself in prosecutions for felonies other than capital, and in prosecutions for misdemeanors he may waive such right through counsel with the consent of the court.

6. Knowledge of a person of the substance and meaning of a restraining order is sufficient knowledge of the order as the basis for a prosecution for contempt, and it is not required that such a person have knowledge of the exact words used in the order.

7. Service of a restraining order on a defendant is sufficient to fix him with knowledge of its provisions as the basis for a prosecution for contempt.

8. The testimony of respondents, together with the other evidence heard by the court, *held* sufficient to sustain the court's findings that each respondent had knowledge of the substance and meaning of a restraining order theretofore issued in the cause and, with such knowledge, willfully and intentionally violated its terms.

9. In proceedings under an order to show cause why respondents should not be held in contempt of court for the willful violation of a restraining order, the admission of affidavits tending to establish specific acts done by each respondent in violation of the order will not be *held* for error when respondents do not challenge the admission of the affidavits or indicate any desire to cross-examine any affiant, and when no objection is made until after judgment, since defendants will be held to have waived their rights of confrontation.

10. Respondents, who with knowledge of a restraining order, willfully participate in a violation of its provisions are subject to punishment for their contumacious acts.

but where the evidence is insufficient to support a finding that one of the respondents had knowledge of the restraining order the judgment for contempt must be reversed as to him.

HIGGINS, J., not sitting.

APPEAL by Johnny Martin, Charlie T. Duke, Douglas Rose, Johnny Rose, Curtis Rose, Charlie C. Harris, Dorsey Eatman, Willie S. Jarrell, Clinton (Clint) Roberson, Leonard Barham, Willie H. Anstead, Gilbert Lee Clayton, George Newcomb Edwards, William M. Jarrell, Tommy Currin, James M. (J. M.) Morefield Willie Furman Tart, Wayne Vick, Edward Moseley, Jimmy J. Mulchi, and George Anstead, from orders entered by *Bickett, J.*, in Chambers in Vance on 17 April 1959, adjudging each in contempt of court, docketed and argued here as No. 385.

On 13 February 1959 Harriet Cotton Mills, a domestic corporation operating a cotton mill in Henderson, instituted an action in the Superior Court of Vance County against two labor unions and 122 named individuals. Contemporaneously with the issuance of summons, plaintiff filed a verified complaint in which it alleged that beginning 15 November 1958 defendants had engaged in mass picketing of its plant, thereby preventing free access thereto by those lawfully entitled to enter; that on 9 February 1959 and since that date defendants had not limited their activities to mass picketing but by threats, assaults, and other acts of violence had prevented employees desiring to do so from working at its plant and by similar conduct had prevented merchants and transportation agencies from delivering cotton and other supplies to its mill. The complaint alleged specific acts of violence by the named defendants. Section 12 of the complaint charged: "That defendants have combined together, and with others whose names are unknown to plaintiff and are combining together to prevent by un-

lawful means, including, among others, the acts of force and violence and threats of force and violence as hereinabove alleged, the operation by plaintiff of its plant, and to prevent or impede other persons lawfully seeking to work therein, or to enter and leave said premises." Asserting inadequate legal remedies, plaintiff prayed for injunctive relief.

On the afternoon of the 13th, Judge Bickett, presiding over the courts of the Ninth Judicial District, issued an order which in part provided: ". . . that the named defendants, and each of them, and all persons acting in concert with them, or under their direction or the direction of any of them, and all other persons to whom notice and knowledge of this order may come, are, until the merits of this cause are determined, and until this Court orders otherwise, hereby enjoined and restrained as follows:

"1. From interfering in any manner with free ingress and egress to and from the plaintiff's premises.

"2. From assaulting, threatening, abusing, damaging the property of or in any manner intimidating persons to work or seek to work in or lawfully seek to enter plaintiff's plant, whether on the plaintiff's premises or streets, or thoroughfares adjacent thereto, or away from said premises.

"3. From assembling together in a motor vehicle or vehicles, and pursuing or following employees or agents of plaintiff riding to and from their work or other lawful business at plaintiff's plant, whether on private roadways on plaintiff's property or on public highways leading to and from said plant.

"4. From having more than eight persons at any one time as peaceful pickets at any gate to the plaintiff's plant, provided that no person, including pickets, may

approach closer to any gate or entrance to the plaintiff's plant than 75 feet, and provided further that no person or persons shall block driveways or walkways leading to the gates or other entrances to said plant by picketing, barricades, automobiles or otherwise; provided further there shall be no pickets except at the entrance gates to plaintiff's premises or plant.

"It is the intent and purpose of this paragraph 4 that no person, whether engaged in picketing or not, other than persons lawfully seeking to approach and enter the plaintiff's premises for the purpose of transacting lawful business or lawfully traveling along thoroughfares adjacent thereto, shall approach closer to any gate of plaintiff's plant than 75 feet, and no automobile shall be parked within 75 feet of plaintiff's gates.

"5. No person shall abuse, intimidate, strike, threaten, or use any vile, abusive, violent, or threatening language at or towards any person on the plaintiff's premises or any person entering or leaving said premises, or any employees of plaintiff anywhere, and shall in no manner interfere with or impede any motor vehicles, wagon, cart, truck or animal, in approaching or leaving the plaintiff's premises, and shall in no manner interfere with the free ingress and egress of any person or vehicle or animal to or from the plaintiff's plant, or along and over any of the streets, road, or walkways adjacent or leading to the plaintiff's plant.

"The acts which persons are hereby enjoined and restrained from doing, they and each of them likewise are hereby enjoined and restrained from aiding or procuring or causing to be done."

The sheriff was directed to serve "and post copies of this order in conspicuous places, at and in the vicinity of plaintiff's plant, and particularly at all the entrance gates to said plant and office."

The caption of the order, after listing the 122 named defendants, is directed to "all other persons to whom notice and knowledge of this action may come."

The order directed defendants to appear at the courthouse in Vance County on 5 March and show cause why it should not remain in force until a final determination of the issues. This order was, on 16 February, served on 114 of the 122 named defendants including Johnny Martin, Charlie T. Duke, Douglas Rose, Johnny Rose, Curtis Rose, Charlie C. Harris, Dorsey Eatman, Willie S. Jarrell, and Clinton Roberson, hereinafter designated as defendant appellants.

The named defendants answered the complaint. They admitted a strike by plaintiff's employees but denied the existence of and participation in any breaches of the peace or other wrongful conduct.

On 5 March Judge Bickett, on motion of plaintiff, continued the restraining order to the final hearing. He recited in his order that the attorney for defendants did not resist plaintiff's motion.

On 25 March plaintiff, as the basis for a show cause and contempt order, filed a petition with Judge Bickett reciting that 26 named individuals, including defendant appellants and George Anstead, Willie H. Anstead, Leonard Barham, Gilbert Lee Clayton, Tommy Currin, George Newcomb Edwards, James M. Morefield, Edward Moseley, Jimmie J. Mulchi, Willie Furman Tart, and Wayne Vick, not parties, and hence hereinafter designated as respondent appellants, had willfully disobeyed the provisions of the restraining order by described acts of violence. Plaintiff filed with its petition and motion numerous affidavits particularizing acts of each appellant constituting a violation of the restraining order.

On 26 March Judge Bickett issued an order reciting the filing of the petition which asserted a willful violation

of the restraining order by appellants "after having actual notice and knowledge of said Restraining Order." He required appellants to appear before him at Henderson on 1 April and show cause why they should not be held for contempt. This order, with copies of plaintiff's petition and motion and the affidavits accompanying the same, was served on appellants.

Defendant appellants and respondent appellants filed a joint answer which was duly verified. To relieve them of the charge of contempt, they say:

"That respondents, and each of them . . . respectively represent to this Honorable Court, that they had no intent to commit any act of violence, to participate in or incite a riot or mob action, as described and set forth in said petition and affidavits.

"That said respondents, and each of them, respectfully represent that if they are guilty of anything at all, which is denied, it was being present at the time and place described in said petition and affidavits when such alleged action or overt acts alleged to have happened and by their presence in or near the scene of such occurrence made them an involuntary and non-participant in the matters and things described in the petition and affidavits.

"That respondents, and each of them, respectfully represent to this Honorable Court, that they had no intent at any time to commit a voluntary and willful act in violation of said restraining order.

"Wherefore, having fully answered Notice to Show Cause, respondents pray that Notice to Show Cause be dismissed and that they not be held in contempt of this Honorable Court."

On 1 April, the return date of the show cause order, the hearing was, at the request of counsel for appellants, continued to 2 April. It was not completed on that date and was again, at the request of counsel, continued.

Hearings were had on 10, 11, and 17 April. On the 17th the court entered orders holding 21, of the 26 cited, for contempt. The record does not disclose what disposition was made with respect to the charges against the remaining five.

Each order contains specific findings of fact with respect to the acts done by the person therein named and a finding that the act or acts were done with a willful intent to violate the restraining order and, as to defendant appellants, knowledge of its provisions by reason of service.

Knowledge of the restraining order by respondent appellants was based on (a) admission by appellants on the witness stand that they knew about the restraining order, and (b) findings that the order had been posted at the mill gates, published in the local paper, and its contents publicized over the radio.

Based on the findings, the court imposed punishment by way of fines varying from $100 to $250, and in addition, imposed prison sentences on five for 20 days and on three for 30 days.

When the orders adjudging appellants in contempt were entered, they noted the following exception:

"To the foregoing Order the respondents and each of them except to the findings of fact and conclusions of law of the Court and respondents and each of them except to the judgment rendered against each of them . . ." Notice of appeal was given and 60 days was allowed appellants to serve statement of case on appeal.

RODMAN, J. The exception quoted in the statement of facts is the only one appearing in the record. Nonetheless, appellants, in the assignments of error, attempt to break this single exception into four parts and refer to four exceptions.

The single exception is broadside. It does not draw into focus any particular finding of fact. It deprives this Court of that assistance it is rightfully entitled to expect if an appellant seriously intends to challenge the sufficiency of the evidence to support the findings of fact. It does not challenge the admissibility of the evidence on which the findings are made nor the probative value of the evidence to establish the facts found. See Rules 19 (3) and 21 of this Court, 221 N. C. 546, Vol. 4A, p. 171 *et seq.* of the General Statutes: *Columbus-Cogan'a v. Thompson*, 249 N. C. 607, 107 S.E. 2d 302; *Calavell v. Bradford*, 248 N.C. 48, 102 S.E. 2d 399; *In re McWhirter*, 248 N.C. 324, 103 S.E. 2d 293; *In re Estate of Cogdill*, 246 N.C. 602, 99 S.E. 2d 785; *Weddle v. Weddle*, 246 N.C. 336, 98 S.E. 2d 302; *Kovacs v. Brewer*, 245 N.C. 630, 97 S.E. 2d 96; *Putnam v. Publications*, 245 N.C. 432, 96 S.E. 2d 445; *Travis v. Johnston*, 244 N.C. 713, 95 S.E. 2d 94; *Morrell v. Hawkins*, 242 N.C. 636, 89 S.E. 2d 242; *Granda v. Walker*, 234 N.C. 734, 68 S.E. 2d 807; *Baysville v. Boone*, 231 N.C. 577, 58 S.E. 2d 351.

The questions presented in this and related appeals heard at this term grow out of a strike of employees at cotton mills in Henderson. The strike began in 1958. Early in 1959 the situation at Henderson was tense. There was much violence. Local law enforcement officers were unable to cope with the situation and maintain order. A large segment of the Highway Patrol was assigned to the Henderson area so that they might assist the local officers. Finally it became necessary to send the National Guard to Henderson. No one wished a declaration of martial law. To the contrary, every one wanted civil authorities to continue in control and civil liberties to continue in force. To accomplish this purpose and to make effective use of the Guard, the Legislature gave the Guard, when called to duty by the Governor, "such power of arrest as may be reasonably necessary to accomplish the purpose for which they have been called

out." c. 453, S. L. 1959. The Legislature made a special appropriation of $750,000 for the purpose of defraying expenses of the National Guard in emergencies. c. 453, S. L. 1959.

Because of the wide interest and importance in this and related cases and the nature and character of questions attempted to be presented, we feel justified in relaxing the rule so as to consider the factual situation described by the evidence as well as the legal questions enumerated in the assignments of error.

The orders holding appellants in contempt are based on events occurring on 2 and 16 March. Some of appellants participated in the acts occurring on 2 March, others in the acts occurring on 16 March.

The order holding Douglas Rose in contempt is based on findings that he took part in prohibited acts on each of these days. Because descriptive of conditions and typical of the facts found by the court which form the basis for the orders punishing for contempt, we quote from the findings in the Douglas Rose order: ". . . the said Douglas Rose willfully, knowingly, and intentionally on March 2, 1959, shortly after 3 o'clock p.m. violated the Restraining Order by being a member of a group or mob of approximately fifteen or twenty people, which group or mob followed Marcus Davis, an employee of the Harriet-Cotton Mill, from the plaintiff mill's gate to his home, and which group or mob stood in the street in front of Marcus Davis' house and threw bricks and bottles at the said Marcus Davis' car, one of which objects hit his car and damaged the same.

"That the Court further finds as a fact that the said Douglas Rose willfully, knowingly and intentionally on March 16, 1959, at or about 3 o'clock p.m. violated the terms of the Restraining Order by throwing rocks or other objects at cars of persons who work in or seek to work in plaintiff's plant, and was a member of a group

or mob of approximately fifty or sixty men, the members of which mob were armed with sticks, rocks, bottles, bricks and clubs, and which said mob was threatening employees of plaintiff, and were stoning the cars of employees of plaintiff as they were leaving work, and blocking Alexander Avenue so that the cars of employees and persons working in the Harriet Cotton Mills could not pass along said street but had to come to a complete stop for several minutes. It is further found as a fact that Douglas Rose, while a part of this mob, participated directly in blocking Alexander Avenue, and was also acting in concert with others in this group or mob in furtherence of the common purpose of willfully, knowingly and intentionally intimidating and threatening persons working in the Harriet Cotton Mills, interfering with the free egress from plaintiff's premises, assaulting, damaging and abusing the property of persons who work in the Harriet Cotton Mills, and interfering with and impeding motor vehicles leaving plaintiff's premises, and that the said Douglas Rose was a party to what the other members of the mob did, in violation of the Restraining Order.

"The Court further finds that the above acts committed by the said Douglas Rose were committed for the purpose of willfully, knowingly and intentionally intimidating employees and persons who work in or seek to work in plaintiff's plant, and interfering with and impeding motor vehicles leaving plaintiff's premises, and interfering with free ingress and egress to and from plaintiff's plant. That respondent, Douglas Rose, on the 16th day of March, 1959, did willfully, knowingly and intentionally violate the terms of the Restraining Order theretofore issued in this cause."

The facts found assuredly suffice to hold appellant in contempt, and since the only question presented by the single exception is the validity of the judgment based on the facts found, it follows that the exception is without merit.

But appellants say that conceding the facts found establish a prohibited act, there is no competent evidence to support the findings, and the findings are therefore a nullity.

To support the charge of contempt the State offered in evidence affidavits of Marcus E. Davis, victim of the mob action of 2 March, and Roy Thomas Edwards and Linwood Sledge, victims of the mob action of 16 March. These affidavits stated in detail acts of violence consisting of throwing rocks, bricks, and other missiles, resulting in damage to the motor vehicles they were operating on the streets of Henderson. The affidavit of Marcus Davis gave the names of five persons who were part of that mob. Edwards and Sledge did not name any members of the mob who attacked them. In addition to these affidavits, 22 affidavits made by members of the State Highway Patrol were introduced in evidence. These affidavits describe the conditions observed by them on 2 and 16 March and the parts which the different persons played in the happenings on those days. The conditions described and appellants' participation therein are sufficient to support the findings. An affidavit of the sheriff of Vance County was put in evidence which stated that copies of the restraining orders had been posted at or near the mills and at the courthouse, published in the local newspaper, and publicized over the radio. Copies of all these affidavits accompanied the show cause order which was served on appellants. No objection was taken when these affidavits were offered in evidence. The record is barren of any suggestion that it was ever intimated to Judge Bickett that the affidavits were not admissible or that it was in any manner inappropriate to use them for the purpose for which they were offered. So far as the record discloses, the first time the right to use the affidavits was questioned was on 3 July when the case on appeal, which included the assignments of error, was served on appellee.

Appellants now urge us to reverse the order holding them in contempt because, as they assert, the affidavits offered to support the findings of fact were incompetent and should have been rejected by the court, *sua sponte*, since proof in that manner constituted a denial of due process guaranteed by both State and Federal Constitutions.

They assert the conduct charged amounts to criminal contempt, *Gaylon* v. *Stutts*, 241 N.C. 120, 84 S.E. 2d 822; *Bessette* v. *W. B. Conkey Co.*, 194 U. S. 324, 48 L. Ed. 997; hence proof of the charges by the affidavits deprived them of the right of confrontation and cross-examination, rights guaranteed by the Constitution.

As stated by appellants, it has been the practice of courts and litigants in this State to use affidavits in contempt proceedings to establish or negative the commission of the asserted contumacious act. In *In re Deaton*, 105 N.C. 59, respondent had been held in contempt by the mayor of Troy. He appealed to the Superior Court. That court declined to review the findings on which the order holding him in contempt was based. On appeal to this Court, *Clark, J.*, said: "In this class of contempts on appeal from the Superior Court, the findings of the Judge as to the facts are conclusive, and this Court can only review the law applicable to such state of facts. It is otherwise, however, on appeals from a subordinate Court to the Superior Court. In that case, it is the duty of the Judge to review the findings of fact of the Court below, as well as the rulings of law; and when, in furtherance of justice, it may be required, the Judge can hear additional testimony, either orally or by affidavit, in making up his own findings of fact." At least since the decision in that case it appears to have been the practice to use affidavits and parol testimony indiscriminately. *In re Parker*, 177 N.C. 463, 99 S. E. 342; *Erwin Mills* v. *Textile Workers' Union*, 234 N. C. 321, 67 S.E. 2d 372;

and *Cotton Mill Co.* v. *Textile Workers Union*, 234 N.C. 545, 67 S.E. 2d 755, illustrate the practice. Just as in the trial of this case the right to use affidavits has heretofore gone unchallenged. Their use has been looked upon as a means of facilitating disposition of the causes.

Not until this and related cases growing out of the Henderson situation has the right to use affidavits been challenged in this Court. The right to use affidavits for the purpose of establishing contumacious conduct has been considered in a few cases outside of North Carolina. The use of such affidavits has been sanctioned in Georgia, *Warner* v. *Martin*, 59 S.E. 446, 4 Ann. Cas. 180; Tennessee, *Bowdon* v. *Bowdon*, 278 S.W. 2d 670; California, *Ex parte Wenzler*, 74 P. 2d 297; Illinois, *O'Neil* v. *People*, 113 Ill. App. 195; North Dakota, *S.* v. *Harris*, 105 N.W. 621. They have been held inadmissible in New Jersey, *Staley* v. *South Jersey Realty Co.*, 90 A 1042, L.R.A. 1917B 113; Connecticut, *Welch* v. *Barber*, 52 Am. Rep. 567; Texas, *Ex parte Kilgore*, 3 Tex. App. 247; Minnesota, *S. ex rel. Russell* v. *District Court*, 62 N.W. 831; by the Circuit Court for the 8th Circuit, *New Jersey Patent Co.* v. *Martin*, 166 F. 1010. The different conclusions reached are noted in 17 C.J.S. 112 and 12 Am. Jur. 441.

In our opinion, the "law of the land" guaranteed by Art. I, sec. 17 of our Constitution, synonymous with due process of law, guarantees to one charged with contempt of court by an asserted willful violation of a restraining order a right, when he denies the asserted violation, to confront and cross-examine witnesses by whose testimony the asserted violation is to be established. Such right of confrontation and cross-examination has been repeatedly declared in analagous situations. *In re Gibbons*, 245 N.C. 24, 95 S.E. 2d 85; *In re Gamble*, 244 N.C. 149, 93 S.E. 2d 66; *Roediger* v. *Sapos*, 217 N.C. 95, 6 S.E. 2d 801; *Bank* v. *Motor Co.*, 216 N.C. 432, 5 S.E. 2d 318; *S.* v. *Hightower*, 187 N.C. 300, 121 S.E. 616; *Cason* v. *Glass*,

Bottle Blowers Asso., 231 P. 2d 6, 21 A.L.R. 2d 1387. Our decisions accord with "due process of law" guaranteed by the Federal Constitution as that phrase has been interpreted by the Supreme Court of the United States. *Re Oliver*, 333 U. S. 257, 92 L. Ed. 682.

But recognition of the right to confront and cross-examine does not establish prejudice to appellants by the method here pursued. Appellants had the privilege of waiving these constitutional rights. "It is the general rule, subject to certain exceptions, that a defendant may waive the benefit of a constitutional as well as a statutory provision," Sedgewick, Stat. and Const. Law, p. 111. And this may be done by express consent, by failure to assert it in apt time, or by conduct inconsistent with a purpose to insist upon it. *S.* v. *Mitchell*, *supra* (119 N. C. 784).

"In this jurisdiction, the more important privilege of being present in person, so as to confront one's accusers on trial for a criminal offense, may, in felonies other than capital, be waived by defendant himself, but not by his counsel, while in misdemeanors such waiver may be made through counsel with the consent of the court." *S.* v. *Hartsfield*, 188 N. C. 357, 124 S. E. 629; *S.* v. *Grundler*, *ante*, 177; *Cameron* v. *McDonald*, 216 N. C. 712, 6 S. E. 2d 497; *S.* v. *Harris*, 181 N. C. 600, 107 S. E. 466; *S.* v. *Mitchell*, *supra*; *Miller* v. *State*, 237 N. C. 29 Cert. den. 345 U. S. 930, 97 L. Ed. 1360.

"No procedural principle is more familiar to this Court than that a constitutional right may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right." *Yakus* v. *U. S.*, 321 U. S. 414, 88 L. Ed. 834; *Michel* v. *Louisiana*, 350 U. S. 91, 100 L. Ed. 83; *Jennings* v. *Illinois*, 342 U. S. 104, 96 L. Ed. 119.

Appellants have been represented throughout by experienced counsel. The briefs here filed and the argu-

ment made in behalf of their clients demonstrate their ability. No one would suggest that these attorneys were not aware of the proper way to protect the rights of their clients.

Each appellant, with the exception of Jimmie J. Mulchi, was a witness in his own behalf. Mulchi, so far as the record discloses, did not testify. Each respondent appellant testifying stated that he had knowledge of the restraining order. Their testimony, read in connection with their answer, is sufficient to justify the court's finding that the acts were done willfully, knowingly, and intentionally violated the terms of the restraining order. It was not necessary to establish that they had knowledge of the exact words used in the order. Knowledge of its substance and meaning was sufficient. *Weston* v. *Lumber Co.*, 158 N. C. 270, 73 S. E. 799. Service of the restraining order on defendant appellants fixed them with knowledge of its provisions.

If appellants wished to challenge the evidence offered for the purpose of establishing their guilt, they should have objected when the evidence was offered. The affidavits came principally from law enforcement officers. Whether they or any of them were in court when the hearing was had does not appear; but we think it certain if appellants had indicated any desire to cross-examine any affiant, permission would have been granted and the affiant brought to court for that purpose. In the absence of an exception the evidence offered was properly received and considered.

"Conceding that, as a piece of independent testimony a mere affidavi was not admissible, it was competent for defendant to waive this objection." *Connecticut Mut. L. Ins. Co.* v. *Hillmon*, 188 U. S. 208, 47 L. Ed. 446.

Johnson, J., in *Lambros* v. *Krakas*, 234 N. C. 287, 66 S. E. 2d 895, quotes Wigmore as follows: "The initiative

in excluding improper evidence is left entirely to the opponent, so far at least as concerns his right to appeal on that ground to another tribunal. The judge may of his own motion deal with offered evidence; but for all subsequent purposes it must appear that the opponent invoked some rule of Evidence. A rule of Evidence not invoked is waived." *Hunt* v. *Wooten*, 238 N. C. 42, 76 S. E. 2d 326; *Grandy* v. *Walker*, *supra*; *Brewer* v. *Ring and Valk*, 177 N. C. 476, 99 S. E. 358; *Tyner* v. *Barnes*, 142 N. C. 410; *Holder* v. *Mfg. Co.*, 135 N. C. 392; *Gudger* v. *Penland*, 118 N. C. 832; *Gibbs* v. *Lyon*, 95 N. C. 146; *Williamson* v. *Canal Co.*, 78 N. C. 156; *Goodwin* v. *Fox*, 129 U. S. 601, 32 L. Ed. 805; *Neal* v. *Delaware*, 103 U. S. 370, 26 L. Ed. 567, *Evans* v. *Hettich*, 7 *Wheaton* 453, 5 L. Ed. 496.

Respondent appellants correctly concede that if they had knowledge of the restraining order and wilfully participated in a violation of its provisions they are subject to punishment for their contumacious acts. *Erwin Mills* v. *Textile Workers Union*, *supra*; *Cotton Mills* v. *Abrams*, 231 N. C. 431, 57 S. E. 2d 803; *Ex parte Lennon*, 166 U. S. 548, 41 L. Ed. 1110; S. ex rel. *Lindsley* v. *Grady*, 195 P. 1049, 15 A.L.R. 383.

Jimmie J. Mulchi is not a party defendant. There is, in our opinion, no evidence in the record sufficient to support the finding that he had knowledge of the restraining order, its purpose, terms and provisions.

The order holding Jimmie J. Mulchi in contempt is Reversed.

As to the other appellants the orders are

Affirmed.

HIGGINS, J., not sitting.

JUDGMENT

SUPREME COURT OF NORTH CAROLINA
Fall Term 1959

No. 385—Vance

HARRIET COTTON MILLS

v.

LOCAL UNION No. 578, TEXTILE WORKERS UNION OF AMERICA (AFL-CIO); TEXTILE WORKERS UNION OF AMERICA (AFL-CIO); JOHNNY ROSE, CHARLIE THOMAS DUKE, CLINT ROBERSON, HILTON PARRISH, WALTER C. WATKINS, ANDREW PENDERGRASS, LEROY WILLIAMSON, WOODROW GOODING, JOHN HENDERSON, HOMER ROBERTS, JR., DOUGLAS ROSE, CARL NEAL, LEE HARRIS, HENRY HARRIS, CHARLIE HARRIS, HERBERT PARRISH, RANSOM HARGROVE, JOYCE R. MEDLIN, ESTHER C. ROBERSON, RACHEL PIETTE, BOSHER EUBANKS, ETTA AYSCUE, LEWIS WRIGHT, CLYDE WOODLIEF, GEORGE ROSE, MRS. GEORGE ROSE, EDITH J. PEOPLES, BLANCHE LEWIS, WARREN WALKER, SALLY JO WALKER, ALBERTA ROSE, RUBY R. CURRIN, MILTON CURRIN, DORTITH THOMPSON, WILLIE JARRELL, FRED LEE COLLIER, WILLIAM CHOPLIN, DAVID SAMUEL PULLEY, DARRELL HEDGPETH, LEWIS CLAYTON, MILO CLEATON, EARL BENNETT, THOMAS STARNES, HERBERT INSCOE, CLARENCE AYSCUE, ANDREW MEDLIN, OSCAR FAULKNER, RANDELL SMITH, LAWRENCE PEACE, CURTIS ROSE, JOHN FAUCETTE, RALPH FAUCETTE, JESSIE ROBERSON, LOUVENE B. COGHILL, VIRGINIA R. PEOPLES, SARAH D. PACE, ALVIN C. BREEDLOVE, LULA BARHAM, DORSEY EATMAN, JAMES EATMAN, WILLIAM C. VOYLES, MYRTLE JOHNSON, MYRTLE P. PEOPLES, BRANSON BLAKE, MILDRED BLAKE, HAROLD VIVERETTE, LONNIE FAISON, JOHNNY MARTIN, TOM WILLIAMS, BENNIE EDWARDS, HORACE FAULKNER, MARY M. WEAVER, LEROY NORRIS, JAMES HOLMES, MILDRED McGHEE, BASIL GREEN, JOE JARRELL, FORREST

McGhee, Chesley Yarborough, Zola Mae Ayscue, Golda Grey Ayscue, Dayton Aysue, Blanche White, James R. Alcox Jr., Annie Turner, Raymond B. Hudson, Eugene Hudson, Lillie Jones, Mattie A. Parrish, Ruby C. Rose, Joe Fowler, Robert Parrish, Maude Jarrell, Florence Roberson, Joe Roberson, Lijah Peoples, James Freeman, Oscar Hedgepeth, Jr., Jim Stevenson, Homer Roberts, Jr., Charlie Raines, Joe Pace, Marvin Griffin, Vollie Manning, Roy Francis, Robert Grissom, Alberta R. McGhee, Bobby Jones, Charlie West, Fred Lee Coghill, Robert Raines, Claudia Gupton, Elizabeth Marks, James Tart, Andrew Raines, Bud Duke, Morton Roberson, Thurston Liggon, Edward F. Tucker, William K. Harris, Homer Roberts, Sr., and all other persons to whom notice and knowledge of this action may come

This cause came on to be argued upon the transcript of the record from the Superior Court of Vance County: Upon consideration whereof, this Court is of opinion that there is error in the record and proceedings of said Superior Court as to appellant Jimmie J. Mulchi; as to the other appellants, there is no error.

It is therefore considered and adjudged by the Court here that the opinion of the Court, as delivered by the Honorable William B. Rodman, Justice, be certified to the said Superior Court to the intent that, as to Jimmie J. Mulchi, judgment is reversed, and, as to Johnny Martin, Charlie T. Duke, Douglas Rose, Johnny Rose, Curtis Rose, Charlie C. Harris, Dorsey Eatman, Willie S. Jarrell, Clinton (Clint) Roberson, Leonard Barham, Willie H. Anstead, Gilbert Lee Clayton, George Newcomb Edwards, William M. Jarrell, Tommy Currin, James M. (J. M.) Morefield, Willie Furman Tart, Wayne Vick, Edward Moseley and George Anstead, judgment is affirmed.

And it is considered and adjudged that the appellants, other than Jimmie J. Mulchi, and surety to the appeal bonds, National Surety Corporation, do pay, for the use of the plaintiff, the amount of Twenty-Seven and 62 100 ($27.62) Dollars in payment of 20 21 parts of the brief and the amount of Six and 67 100 ($6.67) Dollars in payment of 20 21 of the statutory costs. It is adjudged further that the plaintiff and sureties to the prosecution bonds, M. Y. Cooper and John D. Cooper, do pay, for the use of defendant Jimmie J. Mulchi, the amount of Six and no 100 ($6.00) Dollars in payment of 1 21 of the cost of printing the record and brief and 1 21 of the docketing fee, and the amount of Thirty-Three (33c) Cents in payment of 1 21 of the statutory costs.

Adrian J. Newton
Clerk of the Supreme Court

A TRUE COPY

By
Sarah G. Barbee, Deputy Clerk

IN THE SUPERIOR COURT OF VANCE COUNTY, NORTH CAROLINA

No. 385

(Title omitted)

ORDER ADJUDGING APPELLANT, DOUGLAS ROSE, IN CONTEMPT

Filed April 17, 1959

This cause coming on to be heard before the Honorable William Y. Bickett, Judge assigned to hold and presiding over the Courts of the Ninth Judicial District in Chambers in Henderson, Vance County, North Carolina, upon an order to appear and show cause, if any there be, why Douglas Rose and others should not be punished for contempt of Court for willfully violating a Temporary Restraining Order issued by Judge William Y. Bickett on February 13, 1959, which said Restraining Order was continued by Judge William Y. Bickett on March 5, 1959, until the action could be heard on its merits, and the original of which appears in the record of this proceeding; and the Court further finding as a fact that on March 26, 1959, the Honorable William Y. Bickett issued an order to appear before Judge William Y. Bickett in Chambers at Vance County Court House in Henderson, North Carolina, at 10 o'clock a.m. on April 1, 1959, and show cause, if any there be, why the said Douglas Rose and others should not be punished for contempt of Court, and that said order was duly served on the said Douglas Rose on March 31, 1959.

That the Court on April 1, 1959, continued the hearing on the order to show cause why the said Douglas Rose should not be punished for contempt of Court, for the convenience of respondent and his counsel until April 2,

1959. That the Court, being unable to complete said hearings on April 2, 1959, continued the hearing on the order to show cause until further order of Court. That on April 7, 1959, the Court ordered the hearing on the order to show cause for April 10, 1959. That at the request of counsel for respondent and for his convenience, the Court further continued said hearing until April 11, 1959. That the Court being unable to complete said hearing on April 11, 1959, continued the hearing on the order to show cause until April 17, 1959.

That Douglas Rose being represented by counsel and having filed an answer herein, and plaintiff being represented by counsel, and the Court after hearing the affidavits presented by plaintiff, and counsel for respondent failing to offer any affidavit, but after hearing the sworn oral testimony of the respondent, and counsel having been heard, and upon due consideration of the affidavits filed, and the oral testimony offered and argument of counsel, the Court now finds the following facts:

That Douglas Rose was legally served with the Restraining Order on February 16, 1959, and received a copy thereof, and had actual notice and knowledge of its contents.

That the Court further finds as a fact that the said Restraining Order was in full force and effect on March 2, 1959, and on March 16, 1959, and that the said Douglas Rose willfully, knowingly and intentionally on March 2, 1959, shortly after 3 o'clock p.m. violated the Restraining Order by being a member of a group or mob of approximately fifteen or twenty people, which group or mob followed Marcus Davis, an employee of the Harriet Cotton Mill, from the plaintiff mill's gate to his home, and which group or mob stood in the street in front of Marcus Davis' house and threw bricks and bottles at the said Marcus Davis' car, one of which objects hit his car and damaged the same.

That the Court further finds as a fact that the said Douglas Rose willfully, knowingly and intentionally on March 16, 1959, at or about 3 o'clock p.m. violated the terms of the Restraining Order by throwing rocks or other objects at cars of persons who work in or seek to work in plaintiff's plant, and was a member of a group or mob of approximately fifty or sixty men, the members of which mob were armed with sticks, rocks, bottles, bricks and clubs, and which said mob was threatening employees of plaintiff, and were stoning the cars of employees of plaintiff as they were leaving work, and blocking Alexander Avenue so that the cars of employees and persons working in the Harriet Cotton Mills could not pass along said street but had to come to a complete stop for several minutes. It is further found as a fact that Douglas Rose, while a part of this mob, participated directly in blocking Alexander Avenue, and was also acting in concert with others in this group or mob in furtherence of the common purpose of willfully, knowingly and intentionally intimidating and threatening persons working in the Harriet Cotton Mills, interfering with the free egress from plaintiff's premises, assaulting, damaging and abusing the property of persons who work in the Harriet Cotton Mills, and interfering with and impeding motor vehicles leaving plaintiff's premises, and that the said Douglas Rose was a party to what the other members of the mob did in violation of the Restraining Order.

The Court further finds that the above acts committed by the said Douglas Rose were committed for the purpose of willfully, knowingly and intentionally intimidating employees and persons who work in or seek to work in plaintiff's plant, and interfering with and impeding motor vehicles leaving plaintiff's premises, and interfering with free ingress and egress to and from plaintiff's plant. That respondent, Douglas Rose, on the 16th day of March, 1959, did willfully, knowingly and intentionally

violate the terms of the Restraining Order theretofore issued in this cause.

NOW THEREFORE, the Court does hereby find, and IT IS ORDERED AND ADJUDGED that Douglas Rose is in contempt of this Court for willfully, knowingly and intentionally violating the terms of the Restraining Order issued herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Douglas Rose be confined in the common jail of Vance County for 20 days and pay a fine of $200.

IT IS FURTHER ORDERED that Douglas Rose pay 1/21 of the costs of this proceeding.

Done in Chambers at Henderson, Vance County, this 17 day of April, 1959.

WILLIAM Y. BICKETT
Judge Presiding

IN THE SUPERIOR COURT OF VANCE COUNTY, NORTH CAROLINA

No. 385

(Title omitted)

ORDER ADJUDGING APPELLANT, LEONARD BARHAM, IN CONTEMPT

Filed April 17, 1959

This cause coming on to be heard before the Honorable William Y. Bickett, Judge assigned to hold and presiding over the Courts of the Ninth Judicial District in Chambers in Henderson, Vance County, North Carolina, upon an order to appear and show cause, if any there be, why Leonard Barham and others should not be punished for contempt of Court for willfully violating a Temporary Restraining Order issued by Judge William Y. Bickett on February 13, 1959, which said Restraining Order was continued by Judge William Y. Bickett on March 5, 1959, until the action could be heard on its merits, and the original of which appears in the record of this proceeding; and the Court further finding as a fact that on March 26, 1959, the Honorable William Y. Bickett issued an order to appear before Judge William Y. Bickett in Chambers at Vance County Court House in Henderson, North Carolina, at 10 o'clock a.m. on April 1, 1959, and show cause, if any there be, why the said Leonard Barham and others should not be punished for contempt of Court, and that said order was duly served on the said Leonard Barham on March 31, 1959.

That the Court on April 1, 1959, continued the hearing on the order to show cause why the said Leonard Barham should not be punished for contempt of Court, for the convenience of respondent and his counsel, until April 2,

1959. That the Court, being unable to complete said hearings on April 2, 1959, continued the hearing on the order to show cause until further order of Court. That on April 7, 1959, the Court ordered the hearing on the order to show cause for April 10, 1959. That at the request of counsel for respondent and for his convenience, the Court further continued said hearing until April 11, 1959. That the Court being unable to complete said hearing on April 11, 1959, continued the hearing on the order to show cause until April 17, 1959.

That Leonard Barham being represented by counsel and having filed an answer herein, and plaintiff being represented by counsel, and the Court after hearing the affidavits presented by plaintiff, and counsel for respondent failing to offer any affidavit, but after hearing the sworn oral testimony of the respondent and counsel having been heard, and upon due consideration of the affidavits filed, and the oral testimony offered, and argument of counsel, the Court now finds the following facts:

That Leonard Barham had actual knowledge of the Restraining Order and its contents, issued by Judge William Y. Bickett on February 13, 1959, by means of the said Restraining Order being conspicuously posted on bulletin boards set 75 feet on either side of each gate of the Harriet Cotton Mill, and two copies of said Order being posted on either side of the door of the Vance County Court House, and a copy thereof being published in the Henderson Daily Dispatch, a newspaper published in Vance County, on February 14, 1959, and the contents having been publicized over the radio.

The Court further finds as a fact that Leonard Barham was previously found in contempt of Court for violation of the Restraining Order issued herein, on March 7, 1959, and as punishment for his contempt of Court, the said Leonard Barham was ordered confined to the common jail of Vance County for a period of 15 days and

ordered to pay a fine of $150., and that the said Leonard Barham was released on bail pending appeal to the Supreme Court of North Carolina.

And the Court further finding as a fact that Leonard Barham testified under oath that he knew about the Restraining Order.

That the Court further finds as a fact that the said Restraining Order was in full force and effect on March 16, 1959, and that the said Leonard Barham willfully, knowingly and intentionally on March 16, 1959, at or about 3 o'clock p.m. violated the terms of the Restraining Order by being armed with a stick or club and being a member of a group or mob of approximately fifty or sixty men, the members of which mob were armed with sticks, rocks, bottles, bricks and clubs, and which said mob was threatening employees of plaintiff, and were stoning the cars of employees of plaintiff as they were leaving work, and blocking Alexander Avenue so that the cars of employees and persons working in the Harriet Cotton Mills could not pass along said street but had to come to a complete stop for several minutes. It is further found as a fact that Leonard Barham, while a part of this mob, participated directly in blocking Alexander Avenue, and was also acting in concert with others in his group or mob in furtherence of the common purpose of willfully, knowingly and intentionally intimidating and threatening persons working in the Harriet Cotton Mills, interfering with the free egress from plaintiff's premises, assaulting, damaging and abusing the property of persons who work in the Harriet Cotton Mills, and interfering with and impeding motor vehicles leaving plaintiff's premises, and that the said Leonard Barham was a party to what the other members of the mob did in violation of the Restraining Order.

The Court further finds that the above acts committed by the said Leonard Barham were committed for the

purpose of willfully, knowingly and intentionally intimidating employees and persons who work in or seek to work in plaintiff's plant, and interfering with and impeding motor vehicles leaving plaintiff's premises, and interfering with free ingress and egress to and from plaintiff's plant. That respondent, Leonard Barham, on the 16th day of March, 1959, did willfully, knowingly and intentionally violate the terms of the Restraining Order theretofore issued in this cause.

NOW THEREFORE, the Court does hereby find, and IT IS ORDERED AND ADJUDGED that Leonard Barham is in contempt of this Court for willfully, knowingly and intentionally violating the terms of the Restraining Order issued herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Leonard Barham be confined to the common jail of Vance County for a period of 20 days and pay a fine of $150.

IT IS FURTHER ORDERED that Leonard Barham pay 1/21 of the costs of this proceeding.

Done in Chambers at Henderson, Vance County, this 17 day of April, 1959.

WILLIAM Y. BICKETT
Judge Presiding

IN THE SUPERIOR COURT OF VANCE COUNTY,
NORTH CAROLINA

No. 385

(Title omitted)

ORDER ADJUDGING APPELLANT,
CHARLIE C. HARRIS, IN CONTEMPT

Filed April 17, 1959.

This cause coming on to be heard before the Honorable William Y. Bickett, Judge assigned to hold and presiding over the Courts of the Ninth Judicial District in Chambers in Henderson, Vance County, North Carolina, upon an order to appear and show cause, if any there be, why Charlie C. Harris and others should not be punished for contempt of Court for willfully violating a Temporary Restraining Order issued by Judge William Y. Bickett on February 13, 1959, which said Restraining Order was continued by Judge William Y. Bickett on March 3, 1959, until the action could be heard on its merits, and the original of which appears in the record of this proceeding; and the Court further finding as a fact that on March 26, 1959, the Honorable William Y. Bickett issued an order to appear before Judge William Y. Bickett in Chambers at Vance County Court House in Henderson, North Carolina, at 10 o'clock a.m. on April 1, 1959, and show cause, if any there be, why the said Charlie C. Harris and others should not be punished for contempt of Court, and that said order was duly served on the said Charlie C. Harris on March 31, 1959.

That the Court on April 1, 1959, continued the hearing on the order to show cause why the said Charlie C. Harris should not be punished for contempt of Court, for the convenience of respondent and his counsel, until

April 2, 1959. That the Court being unable to complete said hearings on April 2, 1959, continued the hearing on the order to show cause until further order of Court. That on April 7, 1959, the Court ordered the hearing on the order to show cause for April 10, 1959. That at the request of counsel for respondent and for his convenience, the Court further continued said hearing until April 11, 1959. That the Court being unable to complete said hearing on April 11, 1959, continued the hearing on the order to show cause until April 17, 1959.

That Charlie C. Harris being represented by counsel and having filed an answer herein, and plaintiff being represented by counsel, and the Court after hearing the affidavits presented by plaintiff, and counsel for respondent failing to offer any affidavit, but after hearing the sworn oral testimony of the respondent and all the witnesses offered by respondent and by counsel for respondent, and counsel having been heard, and upon due consideration of the affidavits filed, and the oral testimony offered, and argument of counsel, the Court now finds the following facts:

That Charlie C. Harris was legally served with the Restraining Order on February 16, 1959, and received a copy thereof, and had actual notice and knowledge of its contents.

That the Court further finds as a fact that the said Restraining Order was in full force and effect on March 16, 1959, and that the said Charlie C. Harris willfully, knowingly and intentionally on March 16, 1959, at or about 3 o'clock p.m. violated the terms of the Restraining Order by throwing rocks or other objects at cars of persons who work in or seek to work in plaintiff's plant, and while armed with a club was a member of a group or mob of approximately fifty or sixty men, the members of which mob were armed with sticks, rocks, bottles, bricks and clubs, and which said mob was threatening employees

of plaintiff, and were stoning the cars of employees of plaintiff as they were leaving work, and blocking Alexander Avenue so that the cars of employees and persons working in the Harriet Cotton Mills could not pass along said street but had to come to a complete stop for several minutes.

It is further found as a fact that Charlie C. Harris, while a part of this mob, participated directly in blocking Alexander Avenue, and was also acting in concert with others in this group or mob in furtherence of the common purpose of willfully, knowingly and intentionally intimidating and threatening persons working in the Harriet Cotton Mills, interfering with the free egress from plaintiff's premises, assaulting, damaging and abusing the property of persons who work in the Harriet Cotton Mills and interfering with and impeding motor vehicles leaving plaintiff's premises, and that the said Charlie C. Harris was a party to what the other members of the mob did in violation of the Restraining Order.

The Court further finds that the above acts committed by the said Charlie C. Harris were committed for the purpose of willfully, knowingly and intentionally intimidating and threatening employees and persons who work in or seek to work in plaintiff's plant, and damaging the property of persons who seek to work in plaintiff's plant, and interfering with and impeding motor vehicles leaving plaintiff's premises, and interfering with free ingress and egress to and from plaintiff's plant. That respondent Charlie C. Harris on the 16th day of March, 1959, did willfully, knowingly and intentionally violate the terms of the Restraining Order theretofore issued in this cause.

NOW, THEREFORE, the Court does hereby find, and IT IS ORDERED AND ADJUDGED that Charlie C. Harris is in contempt of the Court for willfully, knowingly and intentionally violating the terms of the Restraining Order issued herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Charlie C. Harris be confined in the common jail of Vance County for 20 days and pay a fine of $150.

IT IS FURTHER ORDERED that Charlie C. Harris pay 1/21 of the costs of this proceeding.

Done in Chambers at Henderson, Vance County, this 17 day of April, 1959.

WILLIAM Y. BICKETT
Judge Presiding.

IN THE SUPERIOR COURT OF VANCE COUNTY, NORTH CAROLINA

No. 385

(Title omitted)

ORDER ADJUDGING APPELLANT, DORSEY EATMAN, IN CONTEMPT

Filed April 17, 1959

This cause coming on to be heard before the Honorable William Y. Bickett, Judge assigned to hold and presiding over the Courts of the Ninth Judicial District in Chambers in Henderson, Vance County, North Carolina, upon an order to appear and show cause, if any there be, why Dorsey Eatman and others should not be punished for contempt of Court for willfully violating a Temporary Restraining Order issued by Judge William Y. Bickett on February 13, 1959, which said Restraining Order was continued by Judge William Y. Bickett on March 5, 1959, until the action could be heard on its merits, and the original of which appears in the record of this proceeding; and the Court further finding as a fact that on March 26, 1959, the Honorable William Y. Bickett issued an order to appear before Judge William Y. Bickett in Chambers at Vance County Court House in Henderson, North Carolina, at 10 o'clock a.m. on April 1, 1959, and show cause, if any there be, why the said Dorsey Eatman and others should not be punished for contempt of Court, and that said order was duly served on the said Dorsey Eatman on March 31, 1959.

That the Court on April 1, 1959, continued the hearing on the order to show cause why the said Dorsey Eatman should not be punished for contempt of Court, for the convenience of respondent and his counsel, until April 2,

1959. That the Court, being unable to complete said hearings on April 2, 1959, continued the hearing on the order to show cause until further order of Court. That on April 7, 1959, the Court ordered the hearing on the order to show cause for April 10, 1959. That at the request of counsel for respondent and for his convenience, the Court further continued said hearing until April 11, 1959. That the Court being unable to complete said hearing on April 11, 1959, continued the hearing on the order to show cause until April 17, 1959.

That Dorsey Eatman being represented by counsel and having filed an answer herein, and plaintiff being represented by counsel, and the Court after hearing the affidavits presented by plaintiff, and counsel for respondent failing to offer any affidavit, but after hearing the sworn oral testimony of the respondent and all the witnesses offered by respondent and by counsel for respondent, and counsel having been heard, and upon due consideration of the affidavits filed, and the oral testimony offered, and argument of counsel, the Court now finds the following facts;

That Dorsey Eatman was legally served with the Restraining Order on February 16, 1959, and had actual notice and knowledge of its contents.

The Court further finds as a fact that the said Restraining Order was in full force and effect on March 16, 1959, and that the said Dorsey Eatman willfully, knowingly and intentionally on March 16, 1959, at or about 3 o'clock p.m. violated the terms of the Restraining Order by throwing rocks and other objects at cars of persons who work in or seek to work in plaintiff's plant, and was a member of a group or mob of approximately fifty or sixty men, the members of which mob were armed with sticks, rocks, bottles, bricks and clubs, and which said mob was threatening employees of plaintiff, and were stoning the cars of employees of plaintiff as they were

leaving work, and blocking Alexander Avenue so that the cars of employees and persons working in the Harriet Cotton Mills could not pass along said street but had to come to a complete stop for several minutes. It is further found as a fact that Dorsey Eatman, while a part of this mob, participated directly in blocking Alexander Avenue, and was also acting in concert with others in this group or mob in furtherence of the common purpose of willfully, knowingly and intentionally intimidating and threatening persons working in the Harriet Cotton Mills; interfering with the free egress from plaintiff's premises, assaulting, damaging and abusing the property of persons who work in the Harriet Cotton Mills, and interfering with and impeding motor vehicles leaving plaintiff's premises, and that the said Dorsey Eatman was a party to what the other members of the mob did in violation of the Restraining Order.

The Court further finds that the above acts committed by the said Dorsey Eatman were committed for the purpose of willfully, knowingly and intentionally intimidating employees and persons who work in or seek to work in plaintiff's plant and damaging the property of persons who seek to work in plaintiff's plant and interfering with and impeding motor vehicles leaving plaintiff's premises, and interfering with free ingress and egress to and from plaintiff's plant. That respondent, Dorsey Eatman, on the 16th day of March, 1959, did willfully, knowingly and intentionally violate the terms of the Restraining Order theretofore issued in this cause.

NOW THEREFORE, the Court does hereby find, and IT IS ORDERED AND ADJUDGED that Dorsey Eatman is in contempt of this Court for willfully, knowingly and intentionally violating the terms of the Restraining Order issued herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Dorsey Eatman be confined to the common jail of Vance County for a period of 30 days and pay a fine of $250.

IT IS FURTHER ORDERED that Dorsey Eatman pay 1/21 of the costs of this proceeding.

Done in Chambers at Henderson, Vance County, this 17th day of April, 1959.

WILLIAM Y. BICKETT
Judge Presiding

IN THE SUPERIOR COURT OF VANCE COUNTY, NORTH CAROLINA

No. 385

(Title omitted)

ORDER ADJUDGING APPELLANT, WAYNE VICK, IN CONTEMPT

Filed April 17, 1959

This cause coming on to be heard before the Honorable William Y. Bickett, Judge assigned to hold and presiding over the Courts of the Ninth Judicial District in Chambers in Henderson, Vance County, North Carolina, upon an order to appear and show cause, if any there be, why Wayne Vick and others should not be punished for contempt of Court for willfully violating a Temporary Restraining Order issued by Judge William Y. Bickett on February 13, 1959, which said Restraining Order was continued by Judge William Y. Bickett on March 5, 1959, until the action could be heard on its merits, and the original of which appears in the record of this proceeding; and the Court further finding as a fact that on March 26, 1959, the Honorable William Y. Bickett issued an order to appear before Judge William Y. Bickett in Chambers at Vance County Court House in Henderson, North Carolina, at 10 o'clock a.m. on April 1, 1959, and show cause, if any there be why the said Wayne Vick and others should not be punished for contempt of Court, and that said order was duly served on the said Wayne Vick on March 31, 1959.

That the Court on April 1, 1959, continued the hearing on the order to show cause why the said Wayne Vick should not be punished for contempt of Court for the convenience of respondent and his counsel until April 2, 1959. That the Court, being unable to complete said

hearings on April 2, 1959, continued the hearing on the order to show cause until further order of Court. That on April 7, 1959, the Court ordered the hearing on the order to show cause for April 10, 1959. That at the request of counsel for respondent and for his convenience, the Court further continued said hearing until April 11, 1959. That the Court being unable to complete said hearing on April 11, 1959, continued the hearing on the order to show cause until April 17, 1959.

That Wayne Vick being represented by counsel and having filed an answer herein, and plaintiff being represented by counsel, and the Court after hearing the affidavits presented by plaintiff, and counsel for respondent failing to offer any affidavit, but after hearing the sworn oral testimony of the respondent, and counsel having been heard, and upon due consideration of the affidavits filed, and the oral testimony offered, and argument of counsel, the Court now finds the following facts:

That Wayne Vick had actual knowledge of the Restraining Order and its contents, issued by Judge William Y. Bickett on February 13, 1959, by means of the said Restraining Order being conspicuously posted on bulletin boards set 75 feet on either side of each gate of the Harriet Cotton Mill, and two copies of said Order being posted on either side of the door of the Vance County Court House, and a copy thereof being published in the Henderson Daily Dispatch, a newspaper published in Vance County, on February 14, 1959, and the contents having been publicized over the radio.

And the Court further finds as a fact that Wayne Vick testified under oath that he knew about the Restraining Order.

That the Court further finds as a fact that the said Restraining Order was in full force and effect on March 16, 1959, and that the said Wayne Vick willfully, knowingly and intentionally on March 16, 1959, at or about

3 o'clock p.m. violated the terms of the Restraining Order by throwng rocks or other objects at cars of persons who work in or seek to work in plaintiff's plant, and, while armed with a club was a member of a group or mob of approximately fifty or sixty men, the members of which mob were armed with sticks, rocks, bottles, bricks and clubs, and which said mob was threatening employees of plaintiff, and were stoning the cars of employees of plaintiff as they were leaving work, and blocking Alexander Avenue so that the cars of employees and persons working in the Harriet Cotton Mills could not pass along said street but had to come to a complete stop for several minutes. It is further found as a fact that Wayne Vick, while a part of this mob, participated directly in blocking Alexander Avenue, and was also acting in concert with others in this group or mob in furtherence of the common purpose of willfully, knowingly and intentionally intimidating and threatening persons working in the Harriet Cotton Mills, interfering with the free egress from plaintiff's premises, assaulting, damaging and abusing the property of persons who work in the Harriet Cotton Mills, and interfering with and impeding motor vehicles leaving plaintiff's premises, and that the said Wayne Vick was a party to what the other members of the mob did in violation of the Restraining Order.

The Court further finds that the above acts committed by the said Wayne Vick were committed for the purpose of willfully, knowingly and intentionally intimidating employees and persons who work in or seek to work in plaintiff's plant, and damaging the property of persons who seek to work in plaintiff's plant, and interfering with and impeding motor vehicles leaving plaintiff's premises, and interfering with free ingress and egress to and from plaintiff's plant. That respondent Wayne Vick on the 16th day of March, 1959, did willfully, knowingly and intentionally violate the terms of the Restraining Order theretofore issued in this cause.

NOW, THEREFORE, the Court does hereby find, and IT IS ORDERED AND ADJUDGED that Wayne Vick is in contempt of this Court for willfully, knowingly and intentionally violating the terms of the Restraining Order issued herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Wayne Vick be confined in the common jail of Vance County for a period of 20 days and pay a fine of $150.

IT IS FURTHER ORDERED that Wayne Vick pay 1/21 of the costs of this proceeding.

Done in Chambers at Henderson, Vance County, this 17 day of April, 1959.

WILLIAM Y. BICKETT
Judge Presiding

IN THE SUPREME COURT OF NORTH CAROLINA

Case No. 386

HARRIET COTTON MILLS

v.

LOCAL UNION NO. 578, TEXTILE WORKERS UNION OF AMERICA (AFL-CIO); LUKE HAMM, LEONARD BARHAM, CARL NEAL, BENNIE EDWARDS, HILTON PARRISH, ANDREW MEDLIN, ET AL.

OPINION—Filed November 25, 1959

1. A finding of the court in contempt proceedings that respondents with knowledge of the import of a restraining order willfully participated in a violation of its terms is conclusive when supported by the evidence notwithstanding respondents' contentions that they were mere involuntary witnesses when the restraining order was violated by others.

2. Knowledge of a person of the substance and meaning of a restraining order is sufficient knowledge of the order as the basis for a prosecution for contempt, and it is not required that such person have knowledge of the exact words used in the order.

3. In proceedings under an order to show cause why respondents should not be held in contempt of court for the willful violation of a restraining order, the admission of affidavits tending to establish specific acts done by respondents will not be *held* for error when respondents do not challenge the admission of the affidavits or indicate any desire to cross-examine any affiant, and when no objection is made until after judgment, since respondents will be held to have waived their rights of confrontation.

HIGGINS, J., not sitting.

APPEAL by Lilly Jones, Fred Lee Collier, Johnnie Rose, Lula Barham, Andrew Medlin, Lizzie Cleaton, Daisy Leonard, Sarah Morefield, Hattie Ranes, Leonard Barham, Joseph Finn, Luke Hamm, Carl Neal, Bennie Edwards, Sally Jo Walker, Alberta McGhee, and Hilton Parris from an order of *Bickett, J.*, entered in Chambers in Vance on 7 March 1959, adjudging each in contempt of court; docketed and argued here as No. 386.

RODMAN, J. On 13 February 1959 a restraining order issued in the action begun by Harriet Cotton Mills against Local Union No. 578 of Textile Workers Union of America, Textile Workers Union of America, Johnny Rose, and numerous other individuals who had been employed by plaintiff. The pertinent provisions of that order are set out in No. 385 entitled *Harriet Cotton Mills v. Textile Workers Union, Johnny Martin, et al*, reported *ante*, 218. The provisions of that order as there quoted are made a part of this opinion by reference. Lilly Jones, Fred Lee Collier, Johnnie Rose, Lula Barham, Andrew Medlin, Carl Neal, Bennie Edwards, Sally Jo Walker, Alberta McGhee, and Hilton Parrish were named as defendants and served with summons and copies of the restraining order. They are hereinafter designated as defendant appellants.

Lizzie Cleaton, Daisy Leonard, Sarah Morefield, Hattie Ranes, Leonard Barham, Joseph Finn, and Luke Hamm were not named as defendants in the original action nor were they served with copies of the restraining order. They are hereinafter designated as respondent appellants.

On 24 February plaintiff moved for an order requiring Carl Neal, Bennie Edwards, Sally Jo Walker, and Alberta McGhee to show cause why they should not be attached for contempt for violating the restraining order. The motion was based on acts described in an affidavit of Harvey T. Gupton.

On 26 February plaintiff moved for an order requiring Lizzie Cleaton, Daisy Leonard, Sarah Morefield, Hattie Ranes, Leonard Barham, Joseph Finn, and Luke Hamm to show cause why they should not be held in contempt. The motion was based on acts described in affidavits of C. C. Harris, Chief of Police of Henderson, and J. R. Wilkerson, Captain of Police of Henderson.

On the same day a similar motion based on an affidavit of C. C. Harris, Chief of Police, was made with respect to Lilly Jones, Fred Lee Collier, Johnnie Rose, Lula Barham, and Andrew Medlin. On 3 March a like motion, based on an affidavit of Harold Watkins was made with respect to Hilton Parrish.

Orders issued based on these motions requiring appellants to appear. The orders, with copies of the affidavits, were served on appellants. They answered. These answers deny commission of the acts charged. They do not deny knowledge of the restraining order. Each appellant verified his answer.

At the hearing plaintiff offered the affidavits on which the show cause orders were issued. No objection was made when the affidavits were offered. Affiants Harris and Wilkerson gave oral testimony at the instance of movant. They were cross-examined by counsel for appellants. No request was made to cross-examine the other affiants.

The violations here charged occurred in close proximity to the mill gates and near the bulletin board on which copies of the restraining order were posted. Each appellant was a witness in his own behalf and in several instances testified in behalf of other appellants. The testimony of appellants is sufficient to support a finding that acts were done at the times named in the affidavits which were prohibited by the restraining order. Their testimony establishes that they were at least witnesses

to these acts. They insist that they took no part in the commission of the acts. This assertion is urged as a ground for their discharge. Whether appellants in fact willfully participated in a violation of the order as found by the court or were mere involuntary witnesses is a question of fact which was determined adversely to them by the court. The evidence is sufficient to support the finding.

Here, as in the contempt proceedings against Johnny Martin, et al, No. 385, *ante*, p. ....., there is only one exception. It is broadside. The findings are sufficient to support the judgments holding each in contempt. Service of the restraining order fixed defendant appellants with notice of its provisions. There can be no doubt from the testimony of respondent appellants that they had knowledge of the restraining order, the purposes for which it was issued, and the acts prohibited. This is sufficient. It is not necessary to prove knowledge of the words and phrases used by the court to accomplish its purpose.

Appellants urge the same violation of constitutional rights which were asserted in the proceedings against Johnny Martin et al. in No. 385, *ante*, 218. Here there is less ground for the assertion than in that case. Here two of the affiants were present and were cross-examined by appellants.

Affirmed.

HIGGINS, J., not sitting.

JUDGMENT

SUPREME COURT OF NORTH CAROLINA

Fall Term 1959

No. 386—Vance

HARRIET COTTON MILLS

v.

LOCAL UNION NO. 578, TEXTILE WORKERS UNION OF AMERICA (AFL-CIO); TEXTILE WORKERS UNION OF AMERICA (AFL-CIO); JOHNNY ROSE, CHARLIE THOMAS DUKE, CLINT ROBERSON, HILTON PARRISH, WALTER C. WATKINS, ANDREW PENDERGRASS, LEROY WILLIAMSON, WOODROW GOODING, JOHN HENDERSON, HOMER ROBERTS, JR., DOUGLAS ROSE, CARL NEAL, LEE HARRIS, HENRY HARRIS, CHARLIE HARRIS, HERBERT PARRISH, RANSOM HARGROVE, JOYCE R. MEDLIN, ESTHER C. ROBERSON, RACHEL PIRTLE, BOSHER EUBANKS, ETTA AYSCUE, LEWIS WRIGHT, CLYDE WOODLIEF, GEORGE ROSE, MRS. GEORGE ROSE, EDITH J. PEOPLES, BLANCHE LEWIS, WARREN WALKER, SALLY JOE WALKER, ALBERTA ROSE, RUBY R. CURRIN, MILTON CURRIN, DORTITH THOMPSON, WILLIE JARRELL, FRED LEE COLLIER, WILLIAM CHOPLIN, DAVID SAMUEL PULLEY, DARRELL HEDGPETH, LEWIS CLAYTON, MILO CLEATON, EARL BENNETT, THOMAS STARNES, HERBERT INSCOE, CLARENCE AYSCUE, ANDREW MEDLIN, OSCAR FAULKNER, RANDELL SMITH, LAWRENCE PEACE, CURTIS ROSE, JOHN FAUCETTE, RALPH FAUCETTE, JESSIE ROBERSON, LOU VENE B. COGHILL, VIRGINIA R. PEOPLES, SARAH D. PACE, ALVIN C. BREEDLOVE, LULA BARHAM, DORSEY EATMAN, JAMES EATMAN, WILLIAM C. VOYLES, MYRTLE JOHNSON, MYRTLE P. PEOPLES, BRANSON BLAKE, MILDRED BLAKE, HAROLD VIVERETTE, LONNIE FAISON, JOHNNY MARTIN, TOM WILLIAMS, BENNIE EDWARDS, HORACE FAULKNER, MARY M. WEAVER, LEROY NORRIS, JAMES HOLMES, MILDRED MCGHEE, BASIL GREEN, JOE JARRELL, FORREST MCGHEE, CHESLEY YARBOROUGH, ZOLA MAE AYSCUE, GOLDA GREY AYSCUE, DAYLON AYSCUE, BLANCHE WHITE, JAMES R. ADCOX JR., ANNIE TURNER, RAYMOND B. HUD-

SON, EUGENE HUDSON, LILLIE JONES, MATTIE A. PARRISH, RUBY C. ROSE, JOE FOWLER, ROBERT PARRISH, MAUDE JARRELL, FLORENCE ROBERSON, JOE ROBERSON, LIJAH PEOPLES, JAMES FREEMAN, OSCAR HEDGEPETH, JR., JIM STEVENSON, HOMER ROBERTS, JR., CHARLIE RANES, JOE PACE, MARVIN GRIFFIN, VOLLIE MANNING, ROY FRANCIS, ROBERT GRISSOM, ALBERTA R. MCGHEE, BOBBY JONES, CHARLIE WEST, FRED LEE COGHILL, ROBERT RAINES, CLAUDIA GUPTON, ELIZABETH MARKS, JAMES TART, ANDREW RAINES, BUD DUKE, MORTON ROBERSON, THURSTON LIGGON, EDWARD F. TUCKER, WILLIAM K. HARRIS, HOMER ROBERTS, SR., and all other persons to whom notice and knowledge of this action may come

This cause came on to be argued upon the transcript of the record from the Superior Court of Vance County: Upon consideration whereof, this Court is of opinion that there is no error in the record and proceedings of said Superior Court.

It is therefore considered and adjudged by the Court here that the opinion of the Court, as delivered by the Honorable William B. Rodman, Justice, be certified to the said Superior Court to the intent that the judgment is affirmed.

And it is considered and adjudged further that the defendants Lilly Jones, Fred Lee Collier, Johnnie Rose, Lula Barham, Andrew Medlin, Lizzie Cleaton, Daisy Leonard, Sarah Morefield, Hattie Ranes, Leonard Barham, Joseph Finn, Carl Neal, Bennie Edwards, Sally Jo Walker, Alberta McGhee, and Hilton Parrish, and surety to the appeal bonds, National Surety Corporation, do pay the costs of the appeal in this Court incurred, to wit, the sum of THIRTY-SIX AND NO 100 ($36.00) DOLLARS, and execution issue therefor.

Adrian J. Newton
Clerk of the Supreme Court

A TRUE COPY

By
Sarah G. Barbee, Deputy Clerk

IN THE SUPERIOR COURT OF VANCE COUNTY, NORTH CAROLINA

No. 386

(Title omitted)

ORDER ADJUDGING APPELLANTS IN CONTEMPT

Filed March 7, 1959

This cause coming on to be heard before the Honorable William Y. Bickett, Judge assigned to hold and presiding over the Courts of the Ninth Judicial District in Chambers in Henderson, Vance County, North Carolina, upon orders to appear and show cause why Lillie Jones, Fred Lee Collier, Johnnie Rose, Lula Barhams, Andrew Medlin, Lizzie Cleaton, Daisy Leonard, Sarah Morefield, Hattie Ranes, Leonard Barham, Joseph Finn, Luke Hamm, Carl Neal, Bennie Edwards, Sally Joe Walker, Alberta McGhee and Hilton Parrish and each of them should not be adjudged in contempt of Court for willfully violating the Temporary Restraining Order of Judge Bickett of February 13, 1959, the original of which appears in the record of this proceeding; and the Court further finding as a fact that on February 26, 1959, the Honorable William Y. Bickett issued an order to appear before Judge William Y. Bickett in Chambers at Vance County Courthouse in Henderson, North Carolina at 2:30 o'clock p.m. on March 3, 1959, and show cause, if any there be, why Lilly Jones, Fred Lee Collier, Johnnie Rose, Lula Barham and Andrew Medlin and each of them should not be punished for contempt of Court, and that said order was duly served on the said Lilly Jones, Fred Lee Collier, Johnnie Rose, Lula Barham and Andrew Medlin on February 27, 1959.

The Court further finding as a fact that on February 26, 1959, the Honorable William Y. Bickett issued an

order to appear before the Judge William Y. Bickett in Chambers at Vance County Courthouse in Henderson, North Carolina, at 2:30 o'clock p.m. on March 3, 1959, and show cause, if any there be, why Lizzie Cleaton, Daisy Leonard, Sarah Morefield, Hattie Ranes, Leonard Barham, Joseph Finn and Luke Hamm, and each of them should not be punished for contempt of Court, and the said order was duly served on the said Lizzie Cleaton, Daisy Leonard, Sarah Morefield, Hattie Ranes, Leonard Barham, Joseph Finn and Luke Hamm on February 27, 1959.

And the Court further finding as a fact that on February 25, 1959, the Honorable Susie Sharp issued an order to Carl Neal, Bennie Edwards, Sally Joe Walker and Alberta R. McGhee to appear before the Honorable William Y. Bickett in Chambers at Vance County Courthouse in Henderson, North Carolina, at 3:00 o'clock p.m. on March 5, 1959, and show cause, if any there be, why the said Carl Neal, Bennie Edwards, Sally Joe Walker and Alberta R. McGhee, and each of them should not be punished for contempt of Court; and that said order to show cause was duly served upon the said Carl Neal, Bennie Edwards, Sally Joe Walker and Alberta R. McGhee on February , 1959.

And the Court further finding as a fact that on March 3, 1959, Judge William Y. Bickett issued an order to Hilton Parrish to appear before Judge William Y. Bickett in Chambers at the Vance County Courthouse in Henderson, North Carolina, at 3:00 o'clock P.M. on March 5th and show cause, if any there be, why the said Hilton Parrish should not be punished for contempt of Court, and the said order to show cause was duly served on the said Hilton Parrish on March 3, 1959.

All of the Respondents being represented by counsel, and having filed an answer herein, and Plaintiff being represented by counsel.

After hearing the affidavits presented by Plaintiff and counsel for Respondents failing to offer any affidavits, but after hearing the oral testimony of all the Respondents and all the witnesses offered by Respondents and by counsel for Respondents, and counsel having been heard, and upon due consideration of all affidavits filed, and argument of counsel, the Court now finds the following facts:

That Lilly Jones, Fred Lee Collier, Johnnie Rose, Lula Barham, Andrew Medlin, Carl Neal, Bennie Edwards, Sally Joe Walker, Alberta R. McGhee and Hilton Parrish were legally served with the Restraining Order issued by Judge William Y. Bickett on February 16, 1959, and received a copy thereof and had actual knowledge of its contents; and that Lizzie Cleaton, Daisy Leonard, Sarah Morefield, Hattie Ranes, Leonard Barham, Joseph Finn and Luke Hamm by means of the Restraining Order being conspicuously posted on bulletin boards set 75 feet on either side of each gate of the Harriet Cotton Mill, and two copies of said Order being posted on either side of the Vance County Courthouse door, and a copy thereof being published in the Henderson Daily Dispatch, a newspaper published in Vance County, on February 14, 1959, and the contents having been publicized over the radio and copies thereof being served on Local Union No. 578, Textile Workers Union of America, and that the said Lizzie Cleaton, Daisy Leonard, Sarah Morefield, Hattie Ranes, Leonard Barham, Joseph Finn and Luke Hamm are members of Local Union No. 578, Textile Workers Union of America, and from the oral testimony in open Court by the said Lizzie Cleaton, Daisy Leonard, Sarah Morefield, Harriet Ranes, Leonard Barham, Joseph Finn and Luke Hamm in said cause that they had actual knowledge of the Restraining Order and its contents issued by Judge William Y. Bickett on February 13, 1959.

That as to Respondents, Lilly Jones, Fred Lee Collier and Johnnie Rose, the Court finds as a fact that each of

them willfully, knowingly and intentionally on February 23, 1959, violated the Restraining Order of February 13, 1959, by pushing on a nonstriking worker's automobile in an attempt to overturn the same after the automobile had been stopped approximately 75 feet from the main gate at the Harriet Cotton Mill as it was preparing to enter the gate at said Mill, and Respondents Lilly Jones, Fred Lee Collier and Johnnie Rose by their actions were willfully interfering with free ingress and egress to and from the Plaintiff's plant; and were intimidating persons seeking to enter or work in Plaintiff's plant and interfering with and impeding a motor vehicle approaching Plaintiff's premises.

That as to Respondent Lula Barham, the Court finds as a fact that on February 25, 1959, she willfully, knowingly and intentionally violated the Restraining Order of February 13, 1959, while serving as a picket by stepping in front of a car of a worker who was leaving the mill and standing directly in front of the car and causing the automobile to come to a complete stop, thereby interfering with free egress from Plaintiff's premises, intimidating persons who work in Plaintiff's plant and interfering with and impeding automobiles leaving Plaintiff's premises.

That as to Respondent Andrew Medlin, the Court finds as a fact that on February 25, 1959, he willfully, knowingly and intentionally violated the Restraining Order of February 13, 1959, by throwing a half brick at an automobile containing three persons who had been to Plaintiff's mill to apply for work as the said automobile drove through Plaintiff's main gate, thereby interfering with free egress from Plaintiff's premises, intimidating persons seeking to work in or to enter Plaintiff's plant and interfering with a motor vehicle attempting to leave Plaintiff's premises.

That as to Respondents Lizzie Cleaton, Daisy Leonard and Sarah Morefield and Hattie Ranes, the Court finds

as a fact that each of them on February 24, 1959, willfully, knowingly and intentionally violated the terms of the Restraining Order of February 13, 1959, while serving as pickets by stepping in front of a worker's automobile as it approached Plaintiff's gate, forcing said automobile to come to a complete halt thereby interfering with free ingress to Plaintiff's premises, intimidating persons seeking to work in or enter Plaintiff's plant, and interfering with and impeding automobiles approaching Plaintiff's premises.

That as to Respondents Leonard Barham and Joseph Finn, the Court finds as a fact that on February 25, 1959, each of them willfully, knowingly and intentionally violated the Restraining Order of February 13, 1959, by throwing several soft drink bottles at the workers' automobiles thereby interfering with free ingress and egress to Plaintiff's premises, intimidating persons seeking to enter and leave Plaintiff's plant, interfering with and impeding automobiles leaving Plaintiff's plant.

That as to Respondent Luke Hamm, the Court finds as a fact that on February 25, 1959, he willfully, knowingly and intentionally violated the Restraining Order of February 13, 1959, by throwing a rock at a worker's automobile as it was headed toward Plaintiff's main gate and when the said automobile was approximately 75 feet from the said gate, thereby interfering with free ingress to Plaintiff's premises, intimidating persons seeking to work in Plaintiff's plant and interfering with an automobile seeking to enter Plaintiff's premises.

That as to Respondent Carl Neal, the Court finds as a fact that on February 23, 1959, he willfully, knowingly and intentionally violated the Restraining Order of February 13, 1959, by overturning the car of Harvey T. Gupton, a worker in the Harriet Cotton Mill, as the said Harvey T. Gupton was on his way to work in Plaintiff's plant, thereby interfering with free ingress to plaintiff's.

premises, damaging the property and intimidating a person who works in Plaintiff's plant, interfering and impeding a motor vehicle approaching Plaintiff's premises.

That as to Respondent Bennie Edwards, the Court finds as a fact that on February 23, 1959, he willfully, knowingly and intentionally violated the Restraining Order of February 13, 1959, by overturning the car of Harvey T. Gupton, a worker in the Harriet Cotton Mill, as the said Harvey T. Gupton was on his way to work in Plaintiff's plant, thereby interfering with free ingress to Plaintiff's premises, damaging the property and intimidating a person who works in Plaintiff's plant, and interfering and impeding a motor vehicle approaching Plaintiff's premises.

That as to Respondent Sally Joe Walker, the Court finds as a fact that on February 23, 1959, she willfully, knowingly and intentionally violated the Restraining Order of February 13, 1959, by wrapping a banner around the front of Ernest L. Vaughan's automobile, causing the same to come to a complete stop, thereby interfering with free ingress and egress to Plaintiff's premises, intimidating persons who work in or seek to work in Plaintiff's plant, and interfering with and impeding an automobile approaching Plaintiff's premises.

That as to Respondent Alberta R. McGhee, the Court finds as a fact that on February 23, 1959, she willfully, knowingly and intentionally violated the Restraining Order of February 13, 1959, by wrapping a banner around the front of Ernest L. Vaughan's automobile, causing the same to come to a complete stop, thereby interfering with free ingress and egress to Plaintiff's premises, intimidating persons who work in or seek to work in Plaintiff's plant, and interfering with and impeding an automobile approaching Plaintiff's premises.

That as to Respondent, Hilton Parrish, the Court finds as a fact that on February 26, 1959, he willfully, know-

ingly and intentionally violated the Restraining Order of February 13, 1959, by throwing an object at an employee's of the Harriet Cotton Mill automobile striking the same, thereby interfering with free ingress to Plaintiff's premises, intimidating a person who works in Plaintiff's plant and damaging the property of a person who works in Plaintiff's plant.

The Court further finds that the above acts were willfully, knowingly and intentionally committed by each of the Respondents for the purpose of intimidating and abusing persons who work in or seek to work in or who lawfully seek to enter and leave Plaintiff's plant, and inferfering with and impeding the free ingress and egress to and from Plaintiff's plant.

NOW, THEREFORE, the Court does hereby find, and IT IS ORDERED AND ADJUDGED that the Respondents Lilly Jones, Fred Lee Collier, Johnnie Rose, Lula Barham, Andrew Medlin, Lizzie Cleaton, Daisy Leonard, Sarah Morefield, Hattie Ranes, Leonard Barham, Joseph Finn, Luke Hamm, Carl Neal, Bennie Edwards, Sally Joe Walker, Alberta McGhee and Hilton Parrish and each of them are in contempt of this Court for willful and intentional violations of the Restraining Order issued by this Court on February 13, 1959.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each of them be punished for the said contempt as follows:

That Lilly Jones be confined to the common jail of Vance County, North Carolina, for 30 days and fined the sum of $150.00, the confinement in the common jail to be suspended on condition that she not violate any terms of the Restraining Order originally issued herein on February 13, 1959, so long as said order shall be in effect.

That Fred Lee Collier be confined to the common jail of Vance County, North Carolina, for 30 days and fined

the sum of $150.00, the confinement in the common jail to be suspended on condition that he not violate any terms of the Restraining Order originally issued herein on February 13, 1959, so long as said order shall be in effect.

That Johnnie Rose be confined to the common jail of Vance County, North Carolina, for 30 days and fined the sum of $150.00, the confinement in the common jail to be suspended on condition that he not violate any terms of the Restraining Order originally issued herein on February 13, 1959, so long as said order shall be in effect.

That Lula Barham pay a fine of $100.00.

That Andrew Medlin be confined to the common jail of Vance County, North Carolina for a period of 10 days and pay a fine of $150.00.

That Lizzie Cleaton pay a fine of $100.00.

That Daisy Leonard pay a fine of $100.00.

That Sarah Morefield pay a fine of $100.00.

That Hattie Ranes pay a fine of $100.00.

That Leonard Barham be confined to the common jail of Vance County, North Carolina, for a period of 15 days and pay a fine of $150.00.

That Joseph Finn be confined to the common jail of Vance County, North Carolina, for a period of 15 days and pay a fine of $150.00.

That Luke Hamm be confined to the common jail of Vance County, North Carolina, for a period of 10 days and pay a fine of $150.00.

That Carl Neal be confined to the common jail of Vance County, North Carolina, for a period of 30 days and pay a fine of $250.00.

That Bennie Edwards be confined to the common jail of Vance County, North Carolina, for a period of 20 days and pay a fine of $150.00.

That Sally Joe Walker be confined to the common jail of Vance County, North Carolina, for 30 days and fined the sum of $150.00, the confinement in the common jail to be suspended on condition that she not violate any terms of the Restraining Order originally issued herein on February 13, 1959, so long as the said order shall be in effect.

That Alberta R. McGhee be confined to the common jail of Vance County, North Carolina, for 30 days and fined the sum of $150.00, the confinement in the common jail to be suspended on condition that she not violate any terms of the Restraining Order originally issued herein on February 13, 1959, so long as the said Order shall be in effect.

That Hilton Parrish be confined to the common jail of Vance County, North Carolina, for a period of 10 days and pay a fine of $150.00.

That each Respondent herein pay one seventeenth (1/17) of the costs of this proceeding.

Done in Open Court at Henderson, Vance County, this 7th day of March, 1959.

WILLIAM Y. BICKETT
Judge Presiding

IN THE SUPREME COURT OF NORTH CAROLINA

Case No. 388

HARRIET COTTON MILLS

v.

LOCAL UNION NO. 578, TEXTILE WORKERS UNION OF AMERICA (AFL-CIO); DAVID SAMUEL (SAMBO) PULLEY, WILLIAM CHOPLIN, ET AL.

OPINION—Filed November 25, 1959

1. Assignments of error not discussed in the brief are deemed abandoned.

2. In proceedings under an order to show cause why respondents should not be held in contempt of court for the willful violation of a restraining order, the admission of affidavits tending to establish specific acts done by respondents in violation of the order will not be *held* for error when respondents do not challenge the admission of the affidavits or indicate any desire to cross-examine any affiant on the hearing, or move to strike, or except to the order on such ground, since respondents will be held to have waived their rights of confrontation.

3. As to certain of respondents it *is held* that the evidence, including their own testimony at the hearing upon the order to show cause, was amply sufficient to sustain the finding that they had actual knowledge of the contents of the restraining order they were charged with willfully violating.

4. There was no evidence that one of respondents was a former employee of plaintiff, or was on strike, or was a member of defendant union, or that he resided in the county or had been near plaintiff's plant prior to the occurrence in question, and the sole evidence as to his

violation of the order was testimony of a witness of acts by the respondent seen through binoculars from plaintiff's plant. *Held*: The evidence of the posting of a similar restraining order at the gates of plaintiff's plant and at the court house, and the publicizing of the order by newspaper and radio in the county, is insufficient to charge the respondent with actual knowledge of the contents of the restraining order, and the judgment in contempt is reversed as to him.

HIGGINS, J., not sitting.

APPEALS by David Samuel (Sambo) Pulley, William Choplin and James (Tee-Tie) Morris from *Bickett, J.*, June Term, 1959, of Vance, docketed in this Court as No. 388.

Seperate orders were entered June 23, 1959, in which each appellant was adjudged in contempt "for willfully, knowingly and intentionally," violating, on April 6, 1959, the terms of a temporary restraining order issued February 13, 1959, by Judge Bickett, based on facts alleged in the verified complaint, in the above entitled action, which, by order of March 5, 1959, was continued in full force and effect until trial on the merits.

In No. 385, *ante*, 218, involving appeals from other orders entered in the above entitled action, the pertinent facts as to the institution of the action, the pleadings, and the provisions of the restraining order, are stated; and reference is made thereto. Suffice to say, Pulley and Choplin, defendants in the action, were duly served with copies of the summons, complaint and restraining order. Morris was not a defendant nor was he served with summons, complaint or restraining order.

On April 16, 1959, based on plaintiff's petition of April 11, 1959, and attached affidavits, Judge Bickett ordered five persons, namely David Samuel (Sambo) Pulley, William Choplin, James (Tee-Tie) Morris, Nellie Roberson

and Barbara Roberson, to appear before him on April 29, 1959, at designated time and place, to show cause why each of them should not be punished for contempt of court for wilful violation of said restraining order. This order to show cause set forth that it appeared from the verified petition and attached affidavits that each of the respondents, after "actual notice and knowledge of said Temporary Restraining Order, "had wilfully violated the terms thereof. Copies of said petition and attached affidavits and of said order to show cause were served April 23, 1959, on each of the five respondents.

An answer to said order to show cause, filed in behalf of the five respondents, was verified by each of them. They denied the alleged misconduct and asserted "that they did not commit and had no intent to commit any act of violence, as described and set forth in said Petition and Affidavits, and that they have not had and do not now have any intent to commit any voluntary and wilful act in violation of said restraining order." They prayed that they not be adjudged in contempt and that the order to show cause be dismissed.

A partial hearing on return to said order to show cause was held April 30, 1959, and the hearing thereon was continued to and completed on June 23, 1959.

Plaintiff offered in evidence the court records referred to above and the affidavits of Thomas D. Peck, Murphy D. Shearin, Herman S. Raines, W. H. Neathery, T. E. Stegall, Albert Thorne, Sheriff E. A. Cottrell, and the testimony of Eugene Allen. Respondent Pulley offered in evidence his own testimony and the testimony of Myrna Viverette and of Ruby Currin. Respondent Choplin offered in evidence his own testimony and the testimony of Ruby Currin. Respondent Morris did not testify or offer evidence.

Each of Judge Bickett's said three orders of June 23, 1959, referring by name to the particular respondent di-

rectly affected thereby, contains, *inter alia*, these findings of fact and provisions:

"That (named respondent) had actual knowledge of the Restraining Order and the contents thereof issued by Judge William Y. Bickett on February 13, 1959, . . .

"And the Court further finds as a fact . . . that at or about 12:10 o'clock P.M. on April 6, 1959, (named respondent) by means of a sling shot, shot steel balls across Plaintiff's fence at the cars of persons working in Plaintiff's plant while the same were parked in Plaintiff's parking lot, and at plaintiff's building; that some of the steel balls struck the cars of persons working in Plaintiff's plant and some of the steel balls struck Plaintiff's buildings.

"The Court further finds as a fact that the said Restraining Order was in full force and effect on April 6, 1959, and that (named respondent) wilfully, knowingly and intentionally violated the terms of the Restraining Order at or about 12:10 o'clock P.M. on April 6, 1959, by shooting steel balls with a sling shot at the cars of persons working in the Harriet Cotton Mill, while the cars of the said workers were parked in Plaintiff's parking lot, and shooting steel balls with a sling shot at Plaintiff's yard office building, striking the same, thereby violating Section 2 of the Restraining Order by abusing and damaging the property of, and intimidating persons who work in Plaintiff's plant while on Plaintiff's premises;

"The Court further finds that the above acts committed by the said (named respondent) were committed for the purpose of wilfully, knowingly and intentionally intimidating employees and persons who work in Plaintiff's plant.

"The Court further finds as a fact that (named respondent) on the 6th day of April, 1959, at or about

12:10 o'clock P.M. did wilfully, knowingly and intentionally violate the terms of the Restraining Order issued herein.

"NOW, THEREFORE, the Court does hereby find, and IT IS ORDERED AND ADJUDGED that (named respondent) is in contempt of this Court for wilfully, knowingly and intentionally violating the terms of the Restraining Order issued herein.

"IT IS FURTHER ORDERED, ADJUDGED AND DECREED that (named respondent) be confined to the common jail of Vance County for a period of 30 days and pay a fine of $250.00, and 1/5 of the Cost to be taxed by the Clerk."

Each respondent excepted to the order of June 23, 1959, relating specifically to him, and to the findings of fact and conclusions of law set forth therein, and appealed.

BOBBITT, J. While the record shows four assignments of error, only two are discussed in appellants' brief. Assignments of error, under our Rules and decisions, are deemed abandoned when appellant's brief states no reason or argument and cites no authority in support thereof. *S.* v. *Perry*, 250 N.C. 119, 108 S.E. 2d 447.

Appellants assign as error: "That the Respondents, and each of them, were denied the right to face and cross-examine their accusers, contrary to the laws of the State of North Carolina." Here, as in No. 385, *Harriet Cotton Mills* v. *Local Union No. 578, Textile Workers Union of America (AFL-CIO), et al, ante, 218*, these respondents did not object to the evidence when offered, nor did they move to strike the evidence or any part thereof, nor did they request an opportunity to cross-examine any of the persons whose affidavits were offered in evidence, nor did they except to the order of Judge Bickett on the ground set forth in this assignment of

error; and, on authority of what is stated and held in the cited case, this assignment of error is overruled.

The remaining assignment of error is in these words: "That the record does not support the Judgment as to either Respondent." Appellants, *in their brief*, make no contention that the evidence was not sufficient to support the orders of June 23, 1959, relating specifically to respondents Pulley and Choplin. As to these respondents, there was plenary evidence to support the findings of fact and the orders. Indeed, as to knowledge of the restraining order and the contents thereof, the findings are based in substantial part on their own testimony. Appellants, *in their brief*, do contend the evidence was not sufficient to support the findings of fact and order of June 23, 1959, relating specifically to respondent Morris. While the exception and assignment of error might well be dismissed as broadside, we deem it appropriate to consider this contention.

The only evidence in the record relating in any way to respondent Morris consists of statements in the affidavit of W. H. Neathery, substantially as follows: Between 12:10 and 1:00 p.m. on Monday, April 6, 1959, while watching, by means of binoculars, from an office in the mill building, he saw respondent Morris "shoot one time *toward the building* from which (he) was watching, and heard the ball hit *the side of the building.*" (Our italics)

It is contended in behalf of respondent Morris that the restraining order, if otherwise applicable to him, did not prohibit his said alleged action. The contention is that the restraining order relates to described actions directed against persons entering upon or leaving plaintiff's premises and *to their property*, not to actions against plaintiff's property. For the reason stated below, we deem it unnecessary to pass upon this particular contention.

Upon this record, we are of opinion, and so hold, that the evidence is insufficient to support the finding of fact

that respondent Morris had actual knowledge of the restraining order and of its contents within the rule stated in No. 393, *Henderson Cotton Mills* v. *Local Union No. 584, Textile Workers Union of America (AFL-CIO), et al., ante*, 234.

Judge Bickett found that respondent Morris had actual knowledge of the restraining order and of its contents "by means of the said Restraining Order being conspicuously posted on bulletin boards set 75 feet *on either side of the gates of the Harriet Cotton Mills*; and two copies of said Order being posted on either side of the door of the Vance County Court House, and a copy thereof being published in the Henderson Daily Dispatch, a newspaper published in Vance County, on February 14, 1959, and the contents thereof having been publicized over the radio." (Our italics)

The only evidence relevant to these findings is the affidavit of Sheriff Cottrell in which he states: ". . . on February 14, 1959, two copies of the Temporary Restraining Order, issued by Judge William Y. Bickett in the case of *Henderson Cotton Mills* v. *Local No. 584, et al.* were conspicuously posted on bulletin boards set up 75 feet *on either side of each gate at the Henderson Cotton Mills*, and two copies posted on either side of the Court House Door in Henderson, N.C.; I also know of my own knowledge that a copy of this Temporary Restraining Order has been published in Henderson, and the contents thereof publicized over the radio, . . ." (Our italics) Obviously, this affidavit relates to a similar restraining order issued by Judge Bickett in a separate action.

There is no evidence, apart from the single incident of April 6, 1959, which purports to identify respondent Morris in any way. He was not a defendant. He was not served with summons, complaint or restraining order. *There was no evidence that he knew a restraining order had been issued.* There was no evidence that he was a

former employee of plaintiff or on strike or a member of defendant Union. Indeed, there was no evidence that he resided in Vance County or had been in the vicinity of plaintiff's plant are in Vance County prior to the incident of April 6, 1959. Under these circumstances, we are constrained to hold that the evidence was insufficient to show that he had actual knowledge of the restraining order and of its contents and willfully violated the terms thereof.

If respondent Morris had testified, perhaps the record would have presented a different factual situation. But, unlike his co-respondents, he did not testify. With good reason, he may reflect upon this statement of William James, the philosopher: "Man's silence power is equal in importance to his word power."

It is noted: Nothing in the record before us indicates what disposition, if any, has been made of the contempt proceedings in relation to Nellie Roberson and Barbara Roberson, co-respondents of appellants.

Affirmed as to respondents Pully and Choplin.

Reversed as to respondent Morris.

HIGGINS, J., not sitting.

JUDGMENT

SUPREME COURT OF NORTH CAROLINA
Fall Term 1959

No. 388—Vance

HARRIET COTTON MILLS

v.

LOCAL UNION NO. 578, TEXTILE WORKERS UNION OF AMERICA (AFL-CIO); TEXTILE WORKERS UNION OF AMERICA (AFL-CIO); JOHNNY ROSE, CHARLIE THOMAS DUKE, CLINT ROBERSON, HILTON PARRISH, WALTER C. WATKINS, ANDREW PENDERGRASS, LEROY WILLIAMSON, WOODROW GOODING, JOHN HENDERSON, HOMER ROBERTS, JR., DOUGLAS ROSE, CARL NEAL, LEE HARRIS, HENRY HARRIS, CHARLIE HARRIS, HERBERT PARRISH, RANSOM HARGROVE, JOYCE R. MEDLIN, ESTHER C. ROBERSON, RACHEL PIETTE, BOSHER EUBANKS, ETTA AYSCUE, LEWIS WRIGHT, CLYDE WOODLIEF, GEORGE ROSE, MRS. GEORGE ROSE, EDITH J. PEOPLES, BLANCHE LEWIS, WARREN WALKER, SALLY JOE WALKER, ALBERTA ROSE, RUBY R. CURRIN, MILTON CURRIN, DORTITH THOMPSON, WILLIE JARRELL, FRED LEE COLLIER, WILLIAM CHOPLIN, DAVID SAMUEL PULLEN, DARRELL HEDGPETH, LEWIS CLAYTON, MILO CLEATON, EARL BENNETT, THOMAS STARNES, HERBERT INSCOE, CLARENCE AYSCUE, ANDREW MEDLIN, OSCAR FAULKNER, RANDELL SMITH, LAWRENCE PEACE, CURTIS ROSE, JOHN FAUCETTE, RALPH FAUCETTE, JESSIE ROBERSON, LOU VENE B. COGHILL, VIRGINIA R. PEOPLES, SARAH D. PACE, ALVIN C. BREEDLOVE, LULA BARHAM, DORSEY EATMAN, JAMES EATMAN, WILLIAM C. VOYLES, MYRTLE JOHNSON, MYRTLE P. PEOPLES, BRANSON BLAKE, MILDRED BLAKE, HAROLD VIVERETTE, LONNIE FAISON, JOHNNY MARTIN, TOM WILLIAMS, BENNIE EDWARDS, HORACE FAULKNER, MARY M. WEAVER, LEROY NORRIS, JAMES HOLMES, MILDRED MCGHEE, BASIL GREEN, JOE JARRELL, FORREST

McGhee, Chesley Yarborough, Zola Mae Ayscue, Golda Grey Ayscue, Daylon Ayscue, Blanche White, James R. Adcox Jr., Annie Turner, Raymond B. Hudson, Eugene Hudson, Lillie Jones, Mattie A. Parrish, Ruby C. Rose, Joe Fowler, Robert Parrish, Maude Jarrell, Florence Roberson, Joe Roberson, Lijah Peoples, James Freeman, Oscar Hedgepeth, Jr., Jim Stevenson, Homer Roberts, Jr., Charlie Raines, Joe Pace, Marvin Griffin, Vollie Manning, Roy Francis, Robert Grissom, Alberta R. McGhee, Bobby Jones, Charlie West, Fred Lee Coghill, Robert Raines, Claudia Gupton, Elizabeth Marks, James Tart, Andrew Raines, Bud Duke, Morton Roberson, Thurston Liggon, Edward F. Tucker, William K. Harris, Homer Roberts, Sr., and all other persons to whom notice and knowledge of this action may come

This cause came on to be argued upon the transcript of the record from the Superior Court of Vance County: Upon consideration whereof, this Court is of opinion that there is no error in the record and proceedings of said Superior Court as to respondents Pulley and Choplin: as to respondent Morris, there is error.

It is therefore considered and adjudged by the Court here that the opinion of the Court, as delivered by the Honorable William H. Bobbitt, Justice, be certified to the said Superior Court to the intent that, as to respondents Pulley and Choplin, judgment is affirmed: as to respondent Morris, judgment is reversed.

And it is considered and adjudged further that the respondents, David Samuel (Sambo) Pulley and William Choplin, and surety to the appeal bonds, National Surety Corporation, do pay plaintiff two-thirds of the maximum recovery for printing of the brief in the amount of Nineteen and 34 100 ($19.34) Dollars, and two-thirds of the statutory costs, amounting to Four and 67 100 ($4.67)

Dollars, and plaintiff and sureties to the prosecution bonds, John D. Cooper and M. Y. Cooper, do pay, for the use of the defendant James (Tee-Tie) Morris, one-third of the cost of printing the record and brief and one-third of the docketing fee in the amount of Forty-Two and no/100 ($42.00) Dollars, and one-third of the statutory costs in the amount of Two and 33/100 ($2.33) Dollars.

Adrian J. Newton
Clerk of the Supreme Court

A TRUE COPY

By
Sarah G. Barbee, Deputy Clerk

IN THE SUPERIOR COURT OF VANCE COUNTY, NORTH CAROLINA

No. 388

(Title omitted)

ORDER ADJUDGING APPELLANT, DAVID SAMUEL (SAMBO) PULLEY IN CONTEMPT

Filed June 23, 1959

This cause coming on to be heard before the Honorable William Y. Bickett, Judge assigned to hold and presiding over the Courts of the Ninth Judicial District in Chambers in Henderson, Vance County, North Carolina, upon an order to appear and show cause, if any there be, why David Samuel (Sambo) Pulley and others should not be punished for contempt of Court for wilfully violating a Temporary Restraining Order issued by Judge William Y. Bickett on February 13, 1959, which said Restraining Order was continued by Judge William Y. Bickett on March 5, 1959, until the action could be heard on its merits, and the original of which appears in the record of this proceeding; and the Court further finding as a fact that on April 16, 1959, the Honorable William Y. Bickett issued an order to appear before Judge William Y. Bickett in Chambers at Vance County Court House in Henderson, North Carolina, at 10:00 o'clock a.m. on April 29, 1959, and show cause, if any there be, why the said David Samuel (Sambo) Pulley and others should not be punished for contempt of Court, and that said order was duly served on the said David Samuel (Sambo) Pulley on April 23, 1959.

That the Court on April 29, 1959, continued the hearing on the order to show cause why the said David Samuel (Sambo) Pulley should not be punished for con-

tempt of Court for the convenience of Petitioner and its counsel until April 30, 1959. That the Court heard both Plaintiff and Respondent on April 30, 1959 but continued the passing of Judgment thereon until June 23, 1959.

It further appearing that David Samuel (Sambo) Pulley was represented by counsel at the hearing on this order to show cause on April 30, 1959, and that he filed a duly verified answer herein, and testified in his own behalf, and offered witnesses who testified for him, and the Court after considering the affidavits and other evidence introduced by plaintiff, and the answer filed by Respondent and the sworn testimony of Respondent and his witnesses, and counsel for both plaintiff and respondent having been heard, the Court now finds the following facts:

That David (Sambo) Pulley had actual knowledge of the Restraining Order and the contents thereof issued by Judge William Y. Bickett on February 13, 1959, by means of the said Restraining Order being conspicuously posted on bulletin boards set 75 feet on either side of the gates of the Harriet Cotton Mills, and two copies of said Order being posted on either side of the door of the Vance County Court House, and a copy thereof being published in the Henderson Dispatch, a newspaper published in Vance County, on February 14, 1959, and the contents thereof having been publicized over the radio; that David Samuel (Sambo) Pulley is and was on April 6, 1959, an officer and member of Local Union No. 578, Textile Workers of America; that Local Union No. 578 was served with a copy of the Restraining Order issued herein on February 13, 1959; and that a copy of the Restraining Order issued herein was served on David Samuel (Sambo) Pulley on February 16, 1959.

And the Court further finds as a fact that David Samuel (Sambo) Pulley testified under oath that he knew about the Restraining Order issued herein and its con-

tents; that at or about 12:10 o'clock p.m. on April 6, 1959, David Samuel (Sambo) Pulley by means of a sling shot, shot steel balls across Plaintiff's fence at the cars of persons working in Plaintiff's plant while the same were parked in Plaintiff's parking lot, and at Plaintiff's building; that some of the steel balls struck the cars of persons working in Plaintiff's plant and some of the steel balls struck Plaintiff's buildings.

The Court further finds as a fact that the said Restraining Order was in full force and effect on April 6, 1959, and that David Samuel (Sambo) Pulley wilfully, knowingly and intentionally violated the terms of the Restraining Order at or about 12:10 o'clock p.m. on April 6, 1959, by shooting steel balls with a sling shot at the cars of persons working in the Harriet Cotton Mill, while the cars of the said workers were parked in Plaintiff's parking lot, and shooting steel balls with a sling shot at Plaintiff's yard office building, striking the same, thereby violating Section 2 of the Restraining Order by abusing and damaging the property of, and intimidating persons who work in Plaintiff's plant while on Plaintiff's premises;

The Court further finds that the above acts committed by the said David Samuel (Sambo) Pulley were committed for the purpose of wilfully, knowingly and intentionally intimidating employees and persons who work in Plaintiff's plant.

The Court further finds as a fact that David Samuel (Sambo) Pulley on the 6th day of April, 1959, at or about 12:10 o'clock p.m. did wilfully, knowingly and intentionally violate the terms of the Restraining Order issued herein.

NOW, THEREFORE, the Court does hereby find, and IT IS ORDERED AND ADJUDGED that David Samuel (Sambo) Pulley is in contempt of this Court for wilfully,

knowingly and intentionally violating the terms of the Restraining Order issued herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that David Samuel (Sambo) Pulley be confined to the common jail of Vance County for a period of 30 days and pay a fine of $250.00 and 1/5 of the cost to be taxed by the Clerk.

Done in Chambers in Henderson, Vance County this 23 day of June, 1959.

WILLIAM Y. BICKETT
Judge assigned to and presiding over the Courts of the Ninth Judicial District.

IN THE SUPERIOR COURT OF VANCE COUNTY, NORTH CAROLINA

No. 388

(Title omitted)

ORDER ADJUDGING APPELLANT, WILLIAM CHOPLIN, IN CONTEMPT

Filed June 23, 1959

This cause coming on to be heard before the Honorable William Y. Bickett, Judge assigned to hold and presiding over the Courts of the Ninth Judicial District in Chambers in Henderson, Vance County, North Carolina, upon an order to appear and show cause, if any there be, why William Choplin and others should not be punished for contempt of Court for wilfully violating the terms of a Temporary Restraining Order issued by Judge William Y. Bickett on February 13, 1959, which said Restraining Order was continued by Judge William Y. Bickett on March 5, 1959, until the action could be heard on its merits, and the original of which appears in the record of this proceeding; and the Court further finding as a fact that on April 16, 1959, the Honorable William Y. Bickett issued an order to appear before Judge William Y. Bickett in Chambers at Vance County Court House in Henderson, North Carolina, at 10:00 o'clock a.m. on April 29, 1959, and show cause, if any there be, why the said William Choplin and others should not be punished for contempt of Court, and that said order was duly served on the said William Choplin on April 23, 1959.

That the Court on April 29, 1959, continued the hearing on the order to show cause why the said William Choplin should not be punished for contempt of Court for the convenience of Petitioner and its counsel until

April 30, 1959. That the Court, being unable to complete said hearings on April 30, 1959, continued the hearing on the order to show cause until June 23, 1959.

It further appearing that William Choplin was represented by counsel at the hearing on this order to show cause on April 30, 1959, and that he filed a duly verified answer herein, and testified in his own behalf, and offered witnesses who testified for him, and the Court after considering the affidavits and other evidence introduced by plaintiff, and the answer filed by Respondent and the sworn testimony of Respondent and his witnesses, and counsel for both plaintiff and respondent having been heard, the Court now finds the following facts:

That William Choplin had actual knowledge of the Restraining Order and the contents thereof issued by Judge William Y. Bickett on February 13, 1959, and continued until the action could be heard on its merits, by means of the said Restraining Order being conspicuously posted on bulletin boards set 75 feet on either side of the gates of the Harriet Cotton Mills, and two copies of said Order being posted on either side of the door of the Vance County Court House, and a copy thereof being published in the Henderson Daily Dispatch, a newspaper published in Vance County, on February 14, 1959, and the contents thereof having been publicized over the radio; that William Choplin is and was on April 6, 1959 a member of Local Union No. 578, Textile Workers of America; that Local Union No. 578 was served with a copy of the Restraining Order issued herein on February 13, 1959; and that a copy of the Restraining Order issued herein was served on William Choplin on February 16, 1959.

And the Court further finds as a fact that William Choplin testified under oath that he knew about the Restraining Order issued herein and its contents; that at or about 12:10 o'clock p.m. on April 6, 1959, William Choplin

by means of a sling shot, shot steel balls across Plaintiff's fence at the cars of persons working in Plaintiff's plant while the same were parked in Plaintiff's parking lot, and at Plaintiff's building; that some of the steel balls struck the cars of persons working in Plaintiff's plant and some of the steel balls struck Plaintiff's buildings.

The Court further finds as a fact that the said Restraining Order was in full force and effect on April 6, 1959, and that William Choplin wilfully, knowingly and intentionally violated the terms of the Restraining Order at or about 12:10 o'clock p.m. on April 6, 1959, by shooting steel balls with a sling shot at the cars of persons working in the Harriet Cotton Mill, while the cars of the said workers were parked in Plaintiff's parking lot, and shooting steel balls with a sling shot at Plaintiff's yard office building, striking the same, thereby violating Section 2 of the Restraining Order by abusing and damaging the property of, and intimidating persons who work in Plaintiff's plant while on Plaintiff's premises;

The Court further finds that the above acts committed by the said William Choplin were committed for the purpose of wilfully, knowingly and intentionally intimidating employees and persons who work in Plaintiff's plant.

The Court further finds as a fact that William Choplin on the 6th day of April, 1959, at or about 12:10 o'clock p.m. did wilfully, knowingly and intentionally violate the terms of the Restraining Order issued herein.

NOW, THEREFORE, the Court does hereby find, and IT IS ORDERED AND ADJUDGED that William Choplin is in contempt of this Court for wilfully, knowingly and intentionally violating the terms of the Restraining Order issued herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that William Choplin be confined to the common jail of Vance County for a period of 30 days and pay a fine of $250.00, and 1/5 of the cost to be taxed by the Clerk.

Done in Chambers in Henderson, Vance County this 23 day of June, 1959.

WILLIAM Y. BICKETT
Judge assigned to and presiding over the Courts of the Ninth Judicial District.

IN THE SUPREME COURT OF NORTH CAROLINA

Case No. 390

HENDERSON COTTON MILLS

v.

LOCAL UNION NO. 578, TEXTILE WORKERS UNION OF AMERICA (AFL-CIO), CALVIN PEGRAM, ET AL.

OPINION—Filed November 25, 1959

1. Assignments of error not discussed in the brief are deemed abandoned.

2. In proceedings under an order to show cause why respondents should not be held in contempt of court for the willful violation of a restraining order, the admission of affidavits tending to establish specific acts done by respondents in violation of the order will not be *held* for error when respondents do not object to the admission of the affidavits or indicate any desire to cross-examine any affiant on the hearing, or move to strike, or except to the order on such ground, since respondents will be held to have waived their rights of confrontation.

3. Evidence tending to show that the restraining order issued in the cause had been conspicuously posted on bulletin boards at plaintiff's plant and at the courthouse door, published in the local newspaper, its contents publicized by radio and that the import of the order was of general knowledge throughout the county, that the labor union of which respondents were members had been served with the order, together with respondents' own testimony on the hearing of the order to show cause *is held* sufficient to support the findings of the court that the respondents had actual notice of the substance of the order, it not being required that plaintiff show by posi-

tive evidence that respondents had actually read the restraining order or that it had been read to them.

HIGGINS, J., not sitting.

APPEAL by respondents Ned Thomas and Calvin Pegram from *Bickett, J.*, in Chambers, 7 March 1959, at Henderson, Vance Superior Court, docketed in this Court as case No. 390.

This appeal is from an order entered 7 March 1959, adjudging Ned Thomas and Calvin Pegram and each of them in contempt "for wilfully, knowingly and intentionally" violating the restraining order of 13 February 1959, by Bickett, J., based on facts alleged in the verified complaint filed in this action.

The temporary restraining order issued on 13 February 1959, was in full force and effect on March 7th, 1959. By order of 5 March 1959, it was continued in force and effect until the trial on its merits.

The contents of the restraining order, in pertinent parts, having been set out in the case of *Henderson Cotton Mills* v. *Local Union No. 584, Textile Workers Union of America (AFL-CIO) et al, ante*, 234 and docketed in this Court as case No. 393, will not be set out herein.

Service of summons, complaint and restraining order was promptly made on all (except five individuals) defendants.

The respondents Ned Thomas and Calvin Pegram were not named as defendants in this action, nor were they served with summons, complaint or restraining order prior to the issuance of the show cause order.

On 26 February 1959, plaintiff through its attorney representing unto the court that Ned Thomas and Calvin Pegram have wilfully done certain acts and things prohibited by the restraining order of 13 February 1959, as set forth in affidavit of Raymond Ayscue, and that the

said Ned Thomas and Calvin Pegram had notice and actual knowledge of the terms, conditions and requirements of the restraining order as would be shown by affidavits attached thereto, moved the court that an order for a show cause be issued and directed to Ned Thomas and Calvin Pegram, ordering them to appear and show cause, if any there may be, why each of them should not be punished as for contempt of Court.

Pursuant thereto and on 26 February 1959, Bickett, J., ordered Ned Thomas and Calvin Pegram to appear before him at 2:30 P.M., on the 3rd day of March, 1959, and show cause, if any there be, why each of them should not be punished as for contempt of court. And the court ordered that this order to show cause be served upon Ned Thomas and Calvin Pegram in manner directed, which was done on 27 February 1959.

The respondents filed answer, duly verified by both of them, to the notice to show cause in which they deny the matters and things complained of in the notice which alleges conduct on their part, or either of them, in the manner charged; that while they were at the Ayscue house, they deny that either of them threatened Ayscue in any manner, but only discussed with him in a moderate and friendly way about not returning to work at the mill; and they represent to the court that they had no intent at any time to commit any wilful or unlawful act in violation of said restraining order and have the utmost respect for the court and its orders and mandates. However the respondents did not aver that they or either of them did not have full knowledge of the existence of the restraining order and of the contents thereof.

And upon the hearing at the time and place designated in the order to show cause, each of the respondents appeared in person and represented by counsel, and having filed answer as hereinabove set forth, and plaintiff being represented by counsel:

The record of case on appeal shows that plaintiff offered in evidence two affidavits of Raymond Ayscue, and one of Sheriff Cottrell. The contents of the first affidavit of Ayscue, dated 25 February 1959, read as follows:

"My name is Raymond Ayscue, and I live at 1284 Walters Street, which is just North East of the Henderson Cotton Mills. I work in the Henderson Cotton Mill in the Spinning Room. I came to work on Monday, February 16, 1959, when the mill opened and have been at work continuously since that time.

"Last Tuesday night, February 24, 1959, about 8:40 P.M., I heard a knock at my door. Before opening the door, I asked who was there, and the voice answered, 'Ned'. I recognized this man by his voice as Ned Thomas. I tried to cut on my porch light, but found they had unscrewed the bulb on the porch. I told him I would not open the door until they put the bulb back in so I could see who was there with him. They put the bulb back in, and when the light came on, I opened the door and saw Ned Thomas and Calvin Pegram. When I opened the door I stepped back and both Ned Thomas and Calvin Pegram entered my house. I told them both to leave, but they refused. I had my 22 rifle with me when I answered the door, and I was standing in the corner by the door. I could tell from the voices I heard that there were at least two other people outside in the darkness whom I could not recognize. The first thing Ned spoke was, 'We have come to talk to you about going to work.' Pegram said, 'If you go in in the morning we will kill you.' Ned then said, 'You know we do not want you to go in, and if you don't go in we will get a contract.' He then said, 'If you go in, we are going to kill you too.' I ordered them out of my house again. When I ordered them out that time, Calvin Pegram stepped in front of Ned and he said, 'You know me, Raymond, and I would not go back. If you do go back in that G-d D--n Mill, we

are going to kill you.' They stood there, and I asked them again to leave. At that time I had my rifle beside me, but was not pointing it at either of them, and when Pegram came closer to me, then I picked the rifle up and Pegram grabbed the rifle and I snatched it away from him and asked them to leave again, and they told me again, 'If you go in that Mill, we are going to get you.' At that time I picked the rifle up, and asked them to get out. As Calvin Pegram turned to leave, Ned said to me, 'You really meant that thing.' And I said, 'Yes'. My wife closed the door, and they said, 'We will get you tonight.' That was all, and they left."

And the contents of second affidavit of Aysene dated 3 March 1959, are as follows:

"That the acts of Ned Thomas and Calvin Pegram described in my affidavit of February 25, 1959 were wilful violations of the Temporary Restraining Order issued by Judge William Y. Bickett on February 13, 1959 in the case of *Henderson Cotton Mills* v. *Local No. 584, et al* and were committed with actual knowledge of said order."

The contents of the Sheriff's affidavit dated 3 March 1959, are as follows:

"My name is E. A. Cottrell and I am Sheriff of Vance County; that on February 14, 1959, two copies of the Temporary Restraining Order, issued by Judge William Y. Bickett in the case of *Henderson Cotton Mills* v. *Local No. 584, et al*, were conspicuously posted on bulletin boards set up 75 feet on either side of each gate at the Henderson Cotton Mills, and two copies posted on either side of the Court House Door in Henderson, N. C.; I also know of my own knowledge that a copy of this Temporary Restraining Order has been published in Henderson, and the contents thereof publicized over the Radio, and that this matter is of general knowledge throughout the County."

The respondent Calvin Pegram testified that he had heard about the restraining order and knew that he was forbidden by the restraining order of the court to threaten Ayscue. He denied doing so.

Following the hearing on the show cause order, the court entered order in open court at Henderson on 7th day of March 1959, in pertinent part as follows: "After hearing the affidavit presented by plaintiff, and counsel for respondents failing to offer any affidavits, but after the testimony of all the witnesses offered by respondents and by counsel for respondents, and counsel having been heard, and upon consideration of all affidavits filed and the oral testimony of both respondents and argument of counsel, the court now finds the following facts:

"That Ned Thomas and Calvin Pegram by means of the Restraining Order being conspicuously posted on bulletin boards set 75 feet on either side of each gate of the Henderson Cotton Mill, and two copies of said Restraining Order being posted on either side of the Vance County Court House door, and a copy thereof being published in the Henderson Daily Dispatch, a newspaper published in Vance County, on February 14, 1959, and the contents having been publicized over the radio and copies thereof being served on Local Union No. 584, Textile Workers Union of America, and that the said Ned Thomas and Calvin Pegram are members of Local No. 584, Textile Workers Union of America, and from the oral testimony by the said Ned Thomas and Calvin Pegram in said cause that they had actual knowledge of the Restraining Order issued by Judge William Y. Bickett on February 13, 1959.

"That as to Respondent, Ned Thomas, the Court finds as a fact that he wilfully, knowingly and intentionally violated the Restraining Order of February 13, 1959, by going to the home of Raymond Ayscue, an employee of Henderson Cotton Mills, who had been working in said

mill continuously since February 16, 1959, when the mills opened, in the night time, and threatening to kill him if he went to work in the Henderson Cotton Mill the next morning, thereby threatening and intimidating an employee of the Henderson Cotton Mill who was seeking to work in plaintiff's plant.

"That as to Respondent Calvin Pegram, the court finds as a fact that he wilfully, knowingly and intentionally violated the Restraining Order of February 13, 1959, by going to the home of Raymond Ayscue, an employee of plaintiff Henderson Cotton Mills, who had been working in said mill continuously since February 16, 1959, when the mill opened, in the night time and threatening to kill him if he went to work in the Henderson Cotton Mill the next morning, thereby threatening and intimidating an employee of Henderson Cotton Mills who was seeking to work in plaintiff's plant.

"The court further finds that the above acts were wilfully, knowingly and intentionally committed by each of the Respondents for the purpose of intimidating and threatening a worker and an employee of said Henderson Cotton Mills who was seeking to work in plaintiff's plant.

"Now, Therefore, the Court does hereby find, and It Is Ordered and Adjudged that the Respondents Ned Thomas and Calvin Pegram and each of them are in contempt of this Court for wilful and intentional violations of the Restraining Order issued by this Court on February 13, 1959.

"It is Further Ordered, Adjudged and Decreed that each of them be punished for the said contempt as follows:

"That Ned Thomas be confined to the common jail of Vance County, North Carolina for a period of thirty (30) days and pay a fine in the sum of $250.00.

"That Calvin Pegram be confined to the common jail of Vance County, North Carolina for a period of thirty (30) days and pay a fine in the sum of $250.00."

Respondents and each of them except (1) to the findings of fact and conclusions of law of the court, and (2) to the judgment against each of them, and gave notice of appeal to the Supreme Court, and assign error.

WINBORNE, C.J. Here, as in case No. 385, *Harriet Cotton Mills* v. *Local Union No. 578, Textile Workers Union of America (AFL-CIO) et al, ante, 248* and in No. 389, *Henderson Cotton Mills* v. *Local Union No. 584, Textile Workers Union of America (AFL-CIO) et al, ante, 240* and in No. 393, *Henderson Cotton Mills* v. *Local Union No. 584, Textile Workers Union of America (AFL-CIO) et al, ante, 234* all at this term of Supreme Court, the exception quoted in the appeal entries is the only one appearing in the record. Notwithstanding this, appellants, Respondents Ned Thomas and Calvin Pegram in their assignments of error attempt to break this single exception into four parts and refer to four exceptions.

It is noted that only two of these four assignments of error are discussed in appellant's brief. The others therefore are deemed as abandoned. Rule 28 of the Rules of Practice in the Supreme Court, 221 N.C. 544, at p. 562, *et seq.* See also like ruling in case No. 389, *Henderson Cotton Mills* v. *Local Union No. 584, Textile Workers Union of America (AFL-CIO) et al, ante, 234* and case No. 393, *Henderson Cotton Mills* v. *Local Union No. 584, Textile Workers Union of America (AFL-CIO) et al, ante, 240.*

And of the two assignments of error with respect to which discussion is made in appellant's brief it is contended that the Respondents, and each of them, were denied the right to face and cross-examine their accusers, contrary to the laws of the State of North Carolina.

Here as in case No. 385, *Harriet Cotton Mills* v. *Local Union No. 578, Textile Workers Union of America (AFL-CIO) et al, ante, 218* and in case No. 393, *Henderson Cotton Mills* v. *Local Union No. 584, Textile Workers Union of America (AFL-CIO) et al, ante, 234* the Respondents did not object to the introduction of the affidavits when offered, nor did they move to strike the evidence contained therein, or any part of it; nor did they request an opportunity to examine Raymond Ayscue or the Sheriff, the makers of the affidavits or either of them; nor did they except to the order of Bickett, J., on the ground set forth in the assignment of error; and, therefore, on the authority of the opinion in case No. 385, referred to above, this assignment of error is overruled.

Appellants' remaining assignment of error is based on their general exception to Judge Bickett's order and to the findings of fact and conclusions of law. This exception is broadside, and therefore subject to denial.

Nevertheless, a careful examination of the record reveals that the facts found by the court with respect to the wilful violation of the restraining order by each of the respondents are supported by competent evidence and such findings are binding upon appeal—as in case No. 389, referred to above, and decisions there cited. Hence on authority thereof, as well as of cases numbers 385 and 393, above referred to, the order of Bickett, J., dated 7 March 1959, from which this appeal is taken, will be and it is hereby

Affirmed.

HIGGINS, J., not sitting.

JUDGMENT

SUPREME COURT OF NORTH CAROLINA
Fall Term 1959

No. 390—Vance

HENDERSON COTTON MILLS

v.

LOCAL UNION NO. 584, TEXTILE WORKERS UNION OF AMERICA (AFL-CIO); TEXTILE WORKERS UNION OF AMERICA (AFL-CIO); DOUG ROSE, NICK LANGLEY, RUBY STRANGE, M. LUTHER JACKSON, VERNON W. BURNETTE, ANDREW C. TURNER, CARL C. MOORE, RALPH F. HARRIS, WILLARD O. FAULKNER, JAMES B. G. ROBERSON, ALBERT L. BATTON, HENRY W. STALLINGS, EDWARD J. OFTEN, JAMES E. REARDON, RICHARD F. PARROTT, CLARENCE E. HARPER, JOHN E. STALLINGS, JOE HALE, JOHN LONG, HARRY HICKS, EDWIN ELLINGTON, COY L. PEGRAM, SHERMAN FERRELL, FRANK O. TURNER, LINVEL NELSON, SIDNEY WALLACE, PHIL HARRIS, ELMORE MURPHY, MACON RENN, JOHN OWEN, CLIFTON CARTER, SANDY SAM ROBERSON, JAMES BARKER, EDWARD MOSELEY, WILLIAM TART, MELVIN BRAME, HERMAN MULCHI, R. TALMAIDGE HARPER, BILLY THOMPSON, JOHN G. MULCHI, JAMES M. WILKERSON, and all other Persons to whom Notice and Knowledge of this Action may Come

This cause came on to be argued upon the transcript of the record from the Superior Court of Vance County. Upon consideration whereof, this Court is of opinion that there is no error in the record and proceedings of said Superior Court.

It is therefore considered and adjudged by the Court here that the opinion of the Court, as delivered by the Honorable J. Wallace Winborne, Chief Justice, be certi-

fied to the said Superior Court to the intent that the judgment is affirmed.

And it is considered and adjudged further that the respondents Ned Thomas and Calvin Pegram, and surety to the appeals bonds, National Surety Corporation, do pay the costs of the appeal in this Court incurred, to wit, the sum of THIRTY-FOUR AND 55 100 ($34.55) DOLLARS, and execution issue therefor.

Adrian J. Newton
Clerk of the Supreme Court

A TRUE COPY

By
Sarah G. Barbee, Deputy Clerk

IN THE SUPERIOR COURT OF VANCE COUNTY, NORTH CAROLINA

No. 390

(Title omitted)

ORDER ADJUDGING APPELLANTS IN CONTEMPT

Filed March 7, 1959

This cause coming on to be heard before the Honorable William Y. Bickett, Judge assigned to hold and presiding over the Courts of the Ninth Judicial District in Chambers at Henderson, Vance County, North Carolina, upon orders to appear and show cause why Ned Thomas and Calvin Pegram and each of them should not be adjudged in contempt of Court for wilfully violating the order of Judge Bickett of February 13, 1959, the original of which appears in the record of this proceeding; and the Court finding as a fact that on February 26, 1959, Judge William Y. Bickett issued an order to Ned Thomas and Calvin Pegram, directing each of them to appear before the Honorable William Y. Bickett at 2:30 o'clock on Tuesday, March 3, 1959, at the Vance County Court House and show cause if any there by why each of them should not be punished for contempt of Court; and each of the Respondents appearing in person on March 3, 1959, and being represented by counsel and having filed an answer herein; and Plaintiff being represented by counsel.

After hearing the affidavit presented by Plaintiff and counsel for Respondents failing to offer any affidavits, but after hearing the testimony of all the witnesses offered by Respondents and by counsel for Respondents, and counsel having been heard, and upon due consideration of all affidavits filed and the oral testimony of both

Respondents, and the argument of counsel, the Court now finds the following facts:

That Ned Thomas and Calvin Pegram by means of the Restraining Order being conspicuously posted on bulletin boards set 75 feet on either side of each gate of the Henderson Cotton Mill, and two copies of said Restraining Order being posted on either side of the Vance County Court House door, and a copy thereof being published in the Henderson Daily Dispatch, a newspaper published in Vance County, on February 14, 1959, and the contents having been publicized over the radio and copies thereof being served on Local Union No. 584, Textile Workers Union of America, and that the said Ned Thomas and Calvin Pegram are members of Local Union No. 584, Textile Workers Union of America, and from the oral testimony by the said Ned Thomas and Calvin Pegram in said cause that they had actual knowledge of the Restraining Order issued by Judge William Y. Bickett on February 13, 1959.

That as to Respondent, Ned Thomas, the Court finds as a fact that he wilfully, knowingly and intentionally violated the Restraining Order of February 13, 1959, by going to the home of Raymond Aysenc, an employee of Henderson Cotton Mills, who had been working in said mill continuously since February 16, 1959, when the mills opened, in the night time, and threatening to kill him if he went to work in the Henderson Cotton Mill the next morning, thereby threatening and intimidating an employee of the Henderson Cotton Mill who was seeking to work in plaintiff's plant.

That as to Respondent Calvin Pegram, the Court finds as a fact that he wilfully, knowingly and intentionally violated the Restraining Order of February 13, 1959, by going to the home of Raymond Aysenc, an employee of plaintiff Henderson Cotton Mills, who had been working in said mill continuously since February 16, 1959, when

the mill opened, in the night time and threatening to kill him if he went to work in the Henderson Cotton Mill the next morning, thereby threatening and intimidating an employee of Henderson Cotton Mills who was seeking to work in plaintiff's plant.

The Court further finds that the above acts were wilfully, knowingly and intentionally committed by each of the Respondents for the purpose of intimidating and threatening a worker and an employee of said Henderson Cotton Mills who was seeking to work in plaintiff's plant.

NOW, THEREFORE, the Court does hereby find, and IT IS ORDERED AND ADJUDGED that the Respondents Ned Thomas and Calvin Pegram and each of them are in contempt of this Court for willful and intentional violations of the Restraining Order issued by this Court on February 13, 1959.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each of them be punished for the said contempt as follows:

That NED THOMAS be confined to the common jail of Vance County, North Carolina, for a period of thirty (30) days and pay a fine in the sum of $250.00.

That CALVIN PEGRAM be confined to the common jail of Vance County, North Carolina, for a period of thirty (30) days and pay a fine in the sum of $250.00.

That one-half the cost of this action be taxed to Ned Thomas and one-half the cost of this action be taxed to Calvin Pegram.

Done in Open Court at Henderson, Vance County, this 7th day of March, 1959.

WILLIAM Y. BICKETT
Judge Presiding

IN THE SUPREME COURT OF NORTH CAROLINA

Case No. 391

HENDERSON COTTON MILLS

v.

LOCAL UNION NO. 584, TEXTILE WORKERS UNION OF AMERICA (AFL-CIO), LINVEL NELSON, ET AL.

OPINION—Filed December 2, 1959

1. An exception to the findings of fact and conclusions of law by the court and to the judgment rendered is a broadside exception which does not challenge the sufficiency of the evidence to support the findings of fact.

2. The Supreme Court may review the merits of a cause and decide the questions sought to be presented by the appeal when the matter is of wide public interest and concern, notwithstanding that the exceptions are insufficient to present the questions.

3. Findings of fact supported by competent evidence are as conclusive on appeal as the verdict of a jury.

4. The court's findings of fact, supported by competent evidence, held to support the conclusions of law that appellants willfully violated the terms of a restraining order theretofore issued in the cause and served upon them.

5. In proceedings under an order to show cause why respondents should not be held in contempt of court for a willful violation of a restraining order, the admission of affidavits tending to show specific acts done by respondents in violation of the order will not be held for error when respondents on the hearing do not object to the admission of the affidavits in evidence, make no motion

that they be stricken, and make no request that they be permitted to cross-examine affiants.

HIGGINS, J., not sitting.

APPEAL by respondents, Linvel Nelson, Clifton Carter and Edwin Ellington, from *Bickett, J.*, in Chambers, 12 March 1959, Superior Court of Vance.

This case is docketed in this Court as No. 391.

The judgment appealed from decrees that Linvel Nelson, Clifton Carter and Edwin Ellington (hereinafter referred to as "appellants") are in contempt of court "for wilful and intentional violation of the restraining order issued" in this cause on 13 February 1959.

The pertinent portions of the restraining order are set out in the case of *Henderson Cotton Mills* v. *Local Union No. 584, Textile Workers Union of America (AFL-CIO)*; *Doug Rose, et al, ante, 234*, our case No. 393, decided at this term.

This action was instituted 13 February 1959 and summons, copy of complaint and copy of restraining order were served on each of appellants on 14 February 1959. After notice, duly served on appellants and other defendants, the court, at a hearing in which appellants were represented by counsel, signed an order, dated 5 March 1959, continuing the restraining order until the case should be "heard on its merits." The restraining order was in full force and effect on all dates involved on this appeal.

On 24 February 1959 plaintiff filed a motion in writing and alleged that each of the appellants had violated terms of the restraining order and asked that they be required to show cause why they should not be adjudged in contempt. Affidavits of Henry A. Orr, Jack J. Renn and Curtis Strickland were attached to the motion. On 25 February 1959 the court signed a show cause order. The

order together with copy of the affidavits of Orr, Renn and Strickland were personally served on each of the appellants. Appellants filed answer denying the alleged contemptuous acts set out in the affidavits and disclaiming any wilful violation of the restraining order.

There was a hearing on the show cause order before Bickett, J., on 12 March 1959. The affidavits referred to above and an affidavit of Frank L. Weaver, Jr., were introduced in evidence by movant. Each of the appellants gave testimony in his own behalf; eleven witnesses testified for appellants. The court made findings of fact, concluded that appellants had wilfully violated the restraining order and decreed punishment as follows: (1) Linvel Nelson, 20 days in jail and $150.00 fine; (2) Clifton Carter, 10 days in jail and $150.00 fine; and (3) Edwin Ellington, 20 days in jail and $150.00 fine.

From the foregoing judgment appellants appealed and assigned error.

MOORE, J. The sole exception in the record is "to the findings of fact and conclusions of law by the court, and . . . to the judgment rendered." This is a broadside exception in that it fails to point out and designate the particular findings of fact excepted to and is inadequate to challenge the sufficiency of the evidence to support the findings of fact. *Kovacs* v. *Brewer*, 245 N. C. 630, 634, 97 S. E. 2d 96; *Weaver* v. *Morgan*, 232 N. C. 642, 646, 61 S. E. 2d 916. Ordinarily such exception requires us only to determine whether the findings of fact support the conclusions of law and whether there is error on the face of the record. *Kovacs* v. *Brewer, supra; Putnam* v. *Publications*, 245 N. C. 432, 434, 96 S.E. 2d 445. Since this is one of a series of cases heard at this term involving a large number of persons and questions of unusual public importance, we are disposed to relax the rule in this instance and make a thorough examination of the evidence heard in the court below.

Appellants, formerly employees of Henderson Cotton Mills, were on strike. The mill was operating with other employees. Appellants had been forbidden by the restraining order to interfere with free ingress and egress of workers to and from the mill and forbidden to assault, threaten or abuse any person or damage any property entering or leaving the mill premises.

Movant's evidence, consisting of the affidavits referred to, tends to show: On 23 February 1959 about 3:00 P.M., as Elmer Jenks' car came out of the mill gate into Main Street and headed east, Edwin Ellington and Linvel Nelson threw rocks at the car; Jenks stopped the car and got out; "they continued to throw rocks at his car and hit it several times after it had stopped." The windows in the car were broken. Nelson threw a rock and hit one of the car windows. They also threw rocks and hit William R. Collier's car. On the morning of 24 February 1959 Ellington threw a rock that hit the top of Henry A. Orr's car while Orr was driving toward the mill to go to work. At the same time Clifton Carter rose up from behind a car and threw rocks at Orr's automobile.

Appellants' evidence contradicted movant's evidence in every material particular.

The findings of fact by the court were in accordance with movant's evidence summarized above. The evidence was sufficient to support the court's findings of fact. When thus supported, findings of fact by a judge are as conclusive on appeal as the verdict of a jury. *Milk Commission* v. *Galloway*, 249 N. C. 658, 663, 107 S. E. 2d 631. The findings of fact amply support the conclusions of law that appellants wilfully violated the terms of the restraining order.

Even so, appellants assign as error the hearing of the cause on affidavits and the denial to them of the opportunity to confront and cross-examine their accusers. This

assignment is not based on any exception taken at the hearing. The record shows that there was no objection to the admission of the affidavits in evidence, no motion that they be stricken and no request that appellants be permitted to cross-examine affiants. Appellants were represented by eminent counsel. Had they desired the personal testimony of affiants, request would have been made therefor. The identical question here raised was considered and fully discussed in *Harriet Cotton Mills* v. *Local Union No. 578, Textile Workers Union of America (AFL-CIO)*; *Johnny Rose, et al, ante, 248*, being case No. 385 of our docket, decided at this term. Further discussion here will serve no useful purpose. The assignment of error is without merit.

The judgment below is

Affirmed.

HIGGINS, J., not sitting.

JUDGMENT

SUPREME COURT OF NORTH CAROLINA
Fall Term 1959

No. 391—Vance

HENDERSON COTTON MILLS

v.

LOCAL UNION NO. 584, TEXTILE WORKERS UNION OF AMERICA (AFL-CIO); TEXTILE WORKERS UNION OF AMERICA (AFL-CIO); DOUG ROSE, NICK LANGLEY, RUFUS STRANGE, M. LUTHER JACKSON, VERNON W. BURNETTE, ANDREW C. TURNER, CARL C. MOORE, RALPH F. HARRIS, WILLARD O. FAULKNER, JAMES B. G. ROBERSON, ALBERT L. BATTON, HENRY W. STALLINGS, EDWARD J. OFTEN, JAMES E. REARDON, RICHARD F. PARROTT, CLARENCE E. HARPER, JOHN E. STALLINGS, JOE HALE, JOHN LONG, HARRY HICKS; EDWIN ELLINGTON, COY L. PEGRAM, SHERMAN FERRELL, FRANK O. TURNER, LINVEL NELSON, SIDNEY WALLACE, PHIL HARRIS, ELMORE MURPHY, MACON RENN, JOHN OWEN, CLIFTON CARTER, SANDY SAM ROBERSON, JAMES BARKER, EDWARD MOSELEY, WILLIAM TART, MELVIN BRAME, HERMAN MULCHI, R. TALMADGE HARPER, BILLY THOMPSON, JOHN G. MULCHI, JAMES M. WILKERSON, and all other Persons to whom Notice and Knowledge of this Action may Come

This cause came on to be argued upon the transcript of the record from the Superior Court of Vance County: Upon consideration whereof, this Court is of opinion that there is no error in the record and proceedings of said Superior Court.

It is therefore considered and adjudged by the Court here that the opinion of the Court, as delivered by the Honorable Clifton L. Moore, Justice, be certified to the

said Superior Court to the intent that the judgment is affirmed.

And it is considered and adjudged further that the respondents Linvel Nelson, Clifton Carter and Edwin Ellington, and surety to the appeal bonds, National Surety Corporation, do pay the costs of the appeal in this Court incurred, to wit, the sum of Thirty-Six and no/100 ($36.00) Dollars, and execution issue therefor.

Adrian J. Newton
Clerk of the Supreme Court

A TRUE COPY

By
Sarah G. Barbee, Deputy Clerk

IN THE SUPERIOR COURT OF VANCE COUNTY, NORTH CAROLINA

No. 391

(Title omitted)

ORDER ADJUDGING APPELLANTS IN CONTEMPT

Filed March 12, 1959

This cause coming on to be heard before the Honorable William Y. Bickett, Judge assigned to hold and presiding over the Courts of the Ninth Judicial District in Chambers in Henderson, Vance County, North Carolina, upon orders to appear and show cause why Linvel Nelson, Clifton Carter and Edwin Ellington and each of them should not be adjudged in contempt of Court for wilfully violating the Temporary Restraining Order of Judge Bickett of February 13, 1959, the original of which appears in the record of this proceeding; and the Court further finding as a fact that On February 25, 1959, the Honorable Susie Sharp, Special Judge assigned to and holding the Courts of the Ninth Judicial District, issued an order for Linvel Nelson, Clifton Carter and Edwin Ellington to appear before Judge William Y. Bickett in Chambers at Vance County Court House in Henderson, North Carolina, at 3:00 o'clock p.m. on March 5, 1959, and show cause, if any there be why the said Linvel Nelson, Clifton Carter and Edwin Ellington and each of them should not be punished for contempt of Court, and that said order was duly served on the said Linvel Nelson, Clifton Carter and Edwin Ellington on February 25, 1959.

The Court further finding as a fact that on March 5 1959, the Honorable William Y. Bickett was unable to reach the hearing on the Order to Show Cause, if any there be, why Linvel Nelson, Clifton Carter and Edwin

Ellington should not be punished for contempt, because of prior unfinished hearings, and that Judge William Y. Bickett continued said hearings to March 6, 1959, and that on March 6, 1959, Judge William Y. Bickett was still unable to reach the hearing on the said Order to Show Cause, if any there be, why the Respondents herein should not be punished for contempt; that on March 6, 1959 Judge William Y. Bickett ordered the hearing on the Order to Show Cause, if any there be, why the Respondents herein should not be punished for contempt of Court, continued until 10:00 o'clock a.m. on Wednesday, March 11, 1959, and the said Linvel Nelson, Clifton Carter and Edwin Ellington were ordered to appear before the said William Y. Bickett, Regular Judge assigned to and Presiding over the Courts of the Ninth Judicial District, in Chambers at the Vance County Court House in Henderson, North Carolina, at 10:00 o'clock a.m., on the 11th day of March, 1959, and show cause, if any there be, why each of them should not be punished for contempt of Court.

All of the Respondents being represented by counsel and having filed an answer herein, and each Respondent appeared in person and testified in his own behalf, and Plaintiff being represented by counsel;

After hearing the affidavits presented by Plaintiff and counsel for Respondents failing to offer any affidavits, but after hearing the oral testimony of all the Respondents and all the witnesses offered by Respondents and by Counsel for Respondents, and counsel having been heard, and upon due consideration of all affidavits filed and testimony presented, and argument of counsel, the Court now finds the following facts:

That Linvel Nelson, Clifton Carter and Edwin Ellington were legally served with the Restraining Order issued by Judge William Y. Bickett on February 14, 1959,

and received a copy thereof and had actual knowledge of said Restraining Order and its contents.

That as to Respondent Linvel Nelson, the Court finds as a fact that on February 23, 1959, he wilfully, knowingly and intentionally violated the Restraining Order of February 13, 1959, by throwing rocks at the automobile of Elmer Jenks, who was a worker at the Henderson Cotton Mill, one of which said rocks hit the window of the automobile, shortly after the said Elmer Jenks left the main gate of the Henderson Cotton Mill at or about 3:00 o'clock p.m. when the said Elmer Jenks was leaving work, thereby interfering with free egress from Plaintiff's plant along the streets adjacent to or leading to the plaintiff's plant, intimidating a person who works or seeks to work in plaintiff's plant, and interfering with and impeding a motor vehicle leaving Plaintiff's premises.

That as to Respondent Linvel Nelson, the Court further finds as a fact that on February 24, 1959 he wilfully, knowingly and intentionally violated the Restraining Order of February 13, 1959, by throwing rocks at Jack Orr's car, thereby interfering with free ingress to plaintiff's plant and intimidating a person who works, seeks to work in or lawfully enter Plaintiff's plant, and interfering with and impeding a motor vehicle approaching Plaintiff's premises.

That as to Respondent Clifton Carter, the Court finds as a fact that on February 24, 1959, he wilfully, knowingly and intentionally violated the Restraining Order of February 13, 1959, by throwing rocks at Jack Orr's car, thereby interfering with free ingress to Plaintiff's plant and intimidating a person who works, or seeks to work in or lawfully enter Plaintiff's plant, and interfering with and impeding a motor vehicle approaching Plaintiff's plant.

That as to Respondent Edwin Ellington, the Court finds as a fact that on February 23, 1959, he wilfully, know-

ingly, and intentionally violated the Restraining Order of February 13, 1959, by throwing rocks at the automobile of Elmer Jenks, who was a worker at the Henderson Cotton Mills, shortly after the said Elmer Jenks left the main gate of the Henderson Cotton Mill at or about 3:00 o'clock p.m., when the said Elmer Jenks was leaving Plaintiff's plant for the day, thereby interfering with free egress from Plaintiff's plant along the streets adjacent to or leading to Plaintiff's plant, intimidating persons who work or wish to work in or lawfully enter Plaintiff's plant, and interfering with and impeding a motor vehicle leaving Plaintiff's premises.

That as to Respondent Edwin Ellington, the Court further finds as a fact that on February 24, 1959, he wilfully, knowingly and intentionally violated the Restraining Order of February 13, 1959, by throwing a rock, which said rock struck the car of Henry Orr, an employee of the Henderson Cotton Mill, as the said Henry Orr was driving to the Mill Gate on William Street, thereby interfering with free ingress to Plaintiff's premises, damaging the property of and intimidating persons who work in Plaintiff's plant and interfering with and impeding a motor vehicle approaching Plaintiff's premises.

The Court further finds that the above acts were wilfully, knowingly and intentionally committed by each of the Respondents for the purpose of intimidating and abusing persons who work in or seek to work in or who lawfully seek to enter and leave Plaintiff's plant, and interfering with and impeding the free ingress and egress to and from Plaintiff's plant.

NOW, THEREFORE, the Court does hereby find, and IT IS ORDERED AND ADJUDGED that the Respondents Linvel Nelson, Clifton Carter and Edwin Ellington and each of them are in contempt of this Court for wilful and intentional violations of the Restraining Order issued by this Court on February 13, 1959.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each of them be punished for the said contempt as follows:

That LINVEL NELSON be confined to the common jail of Vance County, North Carolina, for a period of 20 days and pay a fine of $150.00.

That CLIFTON CARTER be confined to the common jail of Vance County, North Carolina, for a period of 10 days and pay a fine of $150.00.

That EDWIN ELLINGTON be confined to the common jail of Vance County, North Carolina, for a period of 20 days and pay a fine of $150.00.

That each Respondent herein pay one-third (1/3) of the costs of this proceeding.

Done in Chambers at Henderson, Vance County, this 12th day of March, 1959.

WILLIAM Y. BICKETT
Judge Presiding

FILE COPY

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JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 723

DOUGLAS ROSE, ANDREW MEDLIN, DAVID SAMBO PULLEY, et al., *Petitioners.*

v.

HARRIET COTTON MILLS AND HENDERSON COTTON MILLS, *Respondents.*

On Petition for a Writ of Certiorari to the Supreme Court of North Carolina

BRIEF FOR RESPONDENTS IN OPPOSITION

BENNETT H. PERRY
Law Building
Henderson, North Carolina

CHARLES P. GREEN
First-Citizens Bank Building
Louisburg, North Carolina

ROBERT G. KITTRELL, JR.
Law Building
Henderson, North Carolina

Attorneys for Respondents

A. W. GHOLSON
125 N. Garnett Street
Henderson, North Carolina

BENNETT H. PERRY, JR.
Law Building
Henderson, North Carolina

Of Counsel

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 723

DOUGLAS ROSE, ANDREW MEDLIN, DAVID SAMBO PULLEY, et al., *Petitioners,*

v.

HARRIET COTTON MILLS AND HENDERSON COTTON MILLS, *Respondents.*

On Petition for a Writ of Certiorari to the Supreme Court of North Carolina

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinions of the Supreme Court of North Carolina relating hereto are reported as follows:

No. Below	Citation	Record
385	251 N.C. 218, 111 S.E. 2d 457	R. p. 201
386	251 N.C. 231, 111 S.E. 2d 465	R. p. 138
388	251 N.C. 248, 111 S.E. 2d 467	R. p. 85
390	251 N.C. 254, 111 S.E. 2d 480	R. p. 53
391	251 N.C. 335, 111 S.E. 2d 484	R. p. 81

QUESTIONS PRESENTED

When a defendant in a civil action in a state court, represented by counsel, makes no objection to the introduction of evidence in the form of affidavits, and makes no exception thereto on appeal to the Supreme Court of the sovereign state except in his brief filed by counsel on behalf of the defendant, and the Supreme Court rules the affidavits were properly admitted in evidence, is a Federal question involved that would merit consideration by the Supreme Court of the United States?

ARGUMENT

The issues involved in the present case are of limited application and confined to the present restricted factual situation. The questions involved are not of a substantial or exceptional nature, nor are they of sufficient importance to warrant consideration by the United States Supreme Court. *Duignan* v. *United States*, 274 U.S. 195 200; 71 L. Ed. 996.

At the onset, the attention of the court is called to the fact that while the petitioners assert that they were denied the right to confront and cross-examine their accusers, the witnesses against petitioners Leonard Barham, Luke Hamm, and Andrew Medlin were, at the request of petitioners' able counsel, called to the witness stand where they testified to the contemptuous acts of the said Barham, Hamm and Medlin. Record below No. 386, pages 76-78. While petitioners' counsel cross-examined at length Chief of Police C. C. Harris, the affiant in the affidavits objected to with regard to Barham and Medlin, about the contemptuous acts of other alleged contemptors, yet they asked no questions in their cross-examination concerning the said Barham or Medlin. When officer Wilkerson was

on the stand testifying as to the contemptuous acts of petitioner Luke Hamm. Record below No. 386 page 78, petitioner's counsel elected not to cross-examine this witness at all.

I.

No Federal Question Involved or Raised

During the trial of petitioners, affidavits were offered in evidence without objection from petitioners or their able counsel. The affidavits were received in evidence without objection. At no time did petitioners except to the judgment on the grounds that it violated due process of law under the Fourteenth Amendment. Neither did petitioners assign as error in their cases on appeal to the Supreme Court of North Carolina, the alleged denial of due process under the Fourteenth Amendment. (See records below: No. 385 p. 198, No. 386 p. 135, No. 388 p. 82, No. 390 p. 50-51, No. 391 p. 78). The question of due process under the Fourteenth Amendment was first injected in their case in petitioners' briefs in the North Carolina Supreme Court. (See petitioners' briefs below: No. 385 p. 53, 54, No. 386, p. 41, 42, No. 388, p. 24, 25, No. 390, p. 21, 22, No. 391, p. 23, 24).

It is well settled in North Carolina that objections to evidence not aptly made are waived.

Hunt v. *Wooten*, 238 N.C. 42, 65 S.E. 2d 503
Green v. *Spivey*, 236 N.C. 435, 442, 73 S.E. 2d 488
Grady v. *Walker*, 234 N.C. 734, 68 S.E. 2d 807.

The time for petitioners to voice an objection was when the affidavits were offered in the trial court.

> "Conceding that, as a piece of independent testimony a mere affidavit was not admissible, it was

competent for defendant to waive his objection" Connecticut, Mutual Life Insurance Company v. Hillmon, 188 U.S. 208, 214, 47 L. Ed. 446, 450.

The initiation in excluding improper evidence is left entirely to the opponent, and a rule of evidence not invoked is waived.

Hunt v. *Wooten*, 238 N.C. 42, 65 S.E. 2d 503, Supra
Lambros v. *Zrakas*, 234 N.C. 287, 289, 66 S.E. 2d 895
Diaz v. *United States*, 223 U.S. 442, 450, 56 L. Ed 500, 32 S. Ct. 250.

Petitioners and their counsel could and should have raised the question they seek to rely on in the trial court by simply objecting to the introduction of the affidavits in evidence. Their election not to make timely assertion of their right in the trial court amounted to a waiver or forfeiture thereof.

Yakus v. *United States*, 321 U.S. 414, 444, 88 L. Ed. 834
Edelman v. *California*, 344 U.S. 357, 97 L. Ed. 387, 73 S. Ct. 293
Jennings v. *Illinois*, 342 U.S. 104, 109, 96 L. Ed. 119, 72 S. Ct. 123
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Pennsylvania R. Co. v. *Illinois Brick Co.*, 297 U.S. 447, 462, 80 L. Ed. 796
Mutual Life Ins. Co. v. *McGraw*, 188 U.S. 291, 47 L. Ed. 480.

II.

No Federal Question Decided by the Court Below

Examination of the opinions below disclose that the cases were decided not on a federal question, but on the rules of evidence. The decisions rest on the necessity of an adverse party invoking a rule of evidence.

In the opinion below, *Cotton Mills* v. *Local 578*, 251 N.C. 218, 227, 111 S.E. 2d 459, petitioners' appendix page 43, the Court states that petitioners' contention is that the proof of the charges by affidavits deprived them of the right of confrontation and cross-examination guaranteed by the constitution. What constitution does the court refer to? The only specific reference to a constitution in the opinion is to Article I, Section 17 of the Constitution of North Carolina. Although the opinion does state that the "law of the land" guaranteed under the North Carolina Constitution is synonymous with due process of law, the reference is ambiguous and the court is apparently saying the same thing in a different way with no clear and affirmative showing that the reference was to "due process" as defined under the Fourteenth Amendment of the Constitution of the United States. The Court below subsequently stated that the North Carolina decisions accord with "due process of law" guaranteed by the Federal Constitution as interpreted in *Re Oliver*, 333 U.S. 257, 92 L. Ed. 682. Neither statement by the Court below raises a federal question or presents any conflict of decisions.

It is a well established principle of the Court that before it will review a decision of a state court it must affirmatively appear from the record that the federal question was presented to the highest court of the state having jurisdiction and that its decision of the federal question was necessary to its determination of the case.

Darley v. *Mayo*, 351 U.S. 277, 100 L. Ed. 1178, 76 S. Ct. 806

Honeyman v. *Hanan*, 300 U.S. 14, 18, 81 L. Ed. 476

Lynch v. *New York*, 293 U.S. 52, 79 L. Ed. 191.

This Court has long held that a federal question first raised in the brief in the court below is not part of the record and insufficient to present a federal question. *Zadig* v. *Baldwin*; 166 U.S. 485, 41 L. Ed. 1087.

A mere discussion of a federal question is insufficient to raise the question.

Minnesota v. *National Tea Company*, 309 U.S. 551, 84 L. Ed. 920

Morrison v. *Watson*, 154 U.S. 111, 38 L. Ed. 927.

When the decision of the state court might have been based either on a state ground or on a federal ground and the state ground is sufficient to sustain the judgment, this court will not undertake to review it.

Durley v. *Mayo*, 351 U.S. 277, 100 L. Ed. 1178, 76 S. Ct. 806, Supra

Williams v. *Kaiser*, 323 U.S. 471, 89 L. Ed. 398.

Neither will this Court undertake to pass upon questions of a constitutional nature which are not clearly necessary to a decision of the case.

Minnesota v. *National Tea Co., et al*, supra.

This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds.

Herb v. *Pitcairn*, 324 U.S. 117, 125, 89 L. Ed. 789

Radio Station WOW, Inc. v. *Johnson*, 326 U.S. 120, 89 L.Ed. 2092, Supra.

Certainly a decision on federal or constitutional questions was not necessary in petitioners' cases, since the decision below rest on adequate, sufficient and independent state grounds.

III.

Sufficient Independent State Grounds to Support Judgments Below

There is sound authority in North Carolina to sustain the judgments of the court below:

> "This testimony was received in evidence, without objection. Therefore, though it is hearsay and also embraces the declarations of the alleged agent, (Parrish v. Mfg. Co.: 211 N.C. 7, 188 S.E. 817), it went to the jury for its full evidentiary value".
>
> *Lambros* v. *Zrakas*, 234 N.C. 287, 289, 66 S.E. 2d 895, Supra.

> "Dean Wigmore states the rule this way: 'the initiative in excluding improper evidence is left entirely to the opponent, so far at least as concerns his right to appeal on that ground to another tribunal. The judge may of his own motion deal with offered evidence; but for all subsequent purposes it must appear that the opponent invoked some rule of Evidence. A rule of Evidence not invoked is waived.' Wigmore on Evidence 3d Ed., Vol. I, Sec. 18, p. 321."
>
> *Lambros* v. *Zrakas*, supra.

> "'The right to except (i.e., object) is a privilege, which the party may waive; and if the ground of exception is known and not seasonably taken, by implication of law it is waived. This proceeds upon two grounds; one, that if the exception is intended to be relied on and is seasonably taken, the omission may be supplied, or the error corrected, and the rights of all parties saved. The other is, that it is not consistent with the purposes of justice for a party, knowing of a secret defect, to proceed and take his chance for a favorable verdict, with the power and intent to annul it as erroneous and void, if it should be against him'. Wigmore on Evidence, 3d Ed., Vol. I, Sec. 18, p. 322."
>
> *Lambros* v. *Zrakas*, supra.

The United States Supreme Court also adheres to the general rule as set forth in *Lambros* v. *Zrakas*, supra, *Opp Cotton Mills, Inc.* v. *Administrator*, 312 U.S. 126, 155, 85 L. Ed. 624, 641.

This is so even though the evidence be hearsay.

Stein v. *New York*, 346 U.S. 156, 97 L. Ed. 1522, 73 S. Ct. 1077

Rowland v. *Boyle*, 244 U.S. 106, 108, 61 L. Ed. 1022

Diaz v. *United States*, 223 U.S. 442, 450, 56 L. Ed. 500, 32 S. Ct. 250, Supra.

Furthermore, it is well established that constitutional rights can be waived, both in a criminal as well as a civil case. In commenting on the waiver of constitutional rights in criminal cases, the court in *United States* v. *Hoyt*, 53 F. 2d 881, 885, observed:

> "Constitutional rights are not fixed and cannot be worn by a party as if they were an impervious armor through which he cannot be reached. They may be waived, and, indeed, they are continually waived in whole or in part in almost all the relationships of life, as is shown in the remarks of Mr. Justice Holmes, when a Justice of the Massachusetts Supreme Court in McAuliffe v. Mayor of New Bedford, 155 Mass. 216, 219, 29 N.E. 517, and cf. Gitlow v. Kiely (D.C.) 4 F (2d) 227, 229, 230, affirmed 49 F (2d) 1077 (C.C. A. 2)".

It has been recognized in North Carolina for some time that constitutional rights can be waived, and the Supreme Court of North Carolina has recognized such constitutional waivers in many cases, some of which are as follows:

Ex parte Steele, 220 N.C. 685, 689, 188 S.E. 2d. 132. Cert. den. 316 U.S. 686, 86 L. Ed. 1758

State v. *Anderson*, 228 N.C. 720, 47 S.E. 2d. 1
Cameron v. *McDonald*, 216 N.C. 712, 6 S.E. 2d, 497
In Re West, 212 N.C. 189, 192, 193, S.E. 134
State v. *Hartsfield*, 188 N.C. 357, 360, 124 S.E. 629
State v. *Mitchell*, 119 N.C. 784, 786, 25 S.E. 783.

The United States Supreme Court recognizes that Constitutional rights can be waived in criminal cases:

Stein v. *New York*, 346 U.S. 156, 97 L. Ed. 1522, 73 S. Ct. 1077, supra.
Jennings v. *Illinois*, 342 U.S. 104, 96 L. Ed. 119, 72 S. Ct. 123, supra.
Parker v. *Illinois*, 333 U.S. 571, 92 L. Ed. 886
Yakus v. *United States*, 321 U.S. 414, 444, 88 L. Ed. 834, supra.
Diaz v. *United States*, 223 U.S. 442, 56 L. Ed. 500, 32 S. Ct. 250, supra.

Likewise, the lower Federal Courts have recognized that constitutional rights can be waived in criminal cases.

Key v. *United States*, 26 F (2d) 241
United States v. *Hoyt*, 53 F (2d) 884, Supra.
Carruthers v. *Reed*, 102 F (2d) 933
Beard v. *Sanford*, 105 F (2d) 141
United States v. *Napila*, 28 F (2d) 898
Barkman v. *Sanford*, 162 F (2d) 592
Jackson v. *Brady*, 133 F (2d) 476, cert. den. 319 U.S. 746, 87 L. Ed. 1702.

And the rights which may be waived have been held to include the right of confrontation and cross-examination.

Merchants Stock & Grain Co. et al v. *Board of Trade of City of Chicago*, 201 F 20.

IV.

No Denial of Due Process

Even if it be deemed that a federal question was properly raised, petitioners have not been denied due process. In their brief petitioners place considerable stress on Re Oliver, supra. North Carolina is in accord with the requirements of due process as set forth in *Re Oliver*, 333 U.S. 257, 92 L. Ed. 682, supra. See the opinion of the Court below, *Cotton Mills* v. *Local 578*, 251 N.C. 218, 228, 111 S.E. 2d 459, Supra. However, petitioners' case is completely lacking of the elements found by the court to deny due process in the Oliver case:

1. Oliver was tried summarily as a direct contempt, while petitioners' cases have been conducted throughout as indirect contempt.

2. Oliver was tried in secret, while the petitioners were tried publicly in the courtroom of the Vance County Superior Court.

3. Oliver was not permitted to have counsel, while petitioners were represented by as many as three competent and able attorneys. Cotton Mills v. Local 578, 251 N.C. 218, 229, 111 S.E. 2d 459, supra.

4. Oliver was not informed of his charges, nor was he given adequate notice of his trial. The petitioners here were informed of the charges against them and given ample notice and opportunity to prepare and present their defense.

5. Oliver was denied an opportunity to be heard, whereas, each of the petitioners testified in his own behalf, and most of them called numerous witnesses.

6. Oliver had, in effect, no opportunity to cross-examine, for as the court said in Re Murchison,

> 349 U.S. 133, 139, 99 L. Ed. 942, 75 S. Ct. 623, there would be the spectacle of the trial judge presenting testimony upon which he must finally pass in determining the guilt or innocence of the defendant. Here, the petitioners' counsel examined some witnesses, elected to waive the right of cross-examining another witness who was on the witness stand, and chose not to request confrontation or cross-examination of others.

In *Stein* v. *New York*, 346 U.S. 156, 97 L. Ed. 1522, 73 S. Ct. 1077, supra, a factual situation similar to petitioners' was before the Court. In the Stein case, the defendant contended that his federal rights were infringed because he was unable to cross-examine accusing witnesses, i.e., the confessors. The Defendant further contended that the privilege of confrontation is secured by the Fourteenth Amendment. The Court approved the doctrine set forth in *West* v. *Louisiana*, 194 U.S. 258, 48 L. Ed. 965, 24 S. Ct. 650, in which it was decided that the federal constitution did not preclude Louisiana from using affidavits on a criminal trial. In disposing of the defendant's contention that the admission of confessions without an opportunity to confront or cross-examine the accusing witness, violated his rights under the Fourteenth Amendment, the Court observed:

> "Basically, Wissner's objections to the introduction of these confessions is that as to him they are hearsay. The hearsay evidence rule, with all its subtleties, anomalies, and ramifications, will not re read into the Fourteenth Amendment."
> *Stein* v. *New York*, supra, at p. 195-196.

The affidavits now contested by petitioners were no more than hearsay evidence and their introduction in evidence did not deny petitioners due process of law.

Jones v. *Buffalo Creek Coal Co.*, 245 U.S. 328, 329, 62 L. Ed. 325

American Railway Express Company v. *Kentucky*, 273 U.S. 269, 71 L. Ed. 639.

Examination of petitioners' records discloses that each had ample notice of the charges against him, that each had an opportunity to appear, testify, and present his defense, that each was represented by able counsel at all stages of the proceeding, and that a public hearing was held in each instance. The requirement of the Fourteenth Amendment is for a fair trial. *Massey* v. *Moore*, 348 U.S. 105, 108, 99 L. Ed. 135, 75 S. Ct. 145 and when the totality of the facts are examined, petitioners received a fair trial and were accorded due process of law throughout the proceedings below.

CONCLUSION

In conclusion, it is urged that since petitioners have failed to properly present any federal question in the manner prescribed by the rules of practice and by the decisions of this Court, and since the decision of the North Carolina Supreme Court is based on the settled law of evidence as applied by the courts of North Carolina, and does in no way depend upon any federal question, and since there was, in no event, any denial of due

process of law in the trial below, this Court should refuse to grant certiorari.

Respectfully submitted.

BENNETT H. PERRY
Law Building
Henderson, North Carolina

CHARLES P. GREEN
First Citizens Bank Building
Louisburg, North Carolina

ROBERT G. KITTRELL JR.
Law Building
Henderson, North Carolina

Attorneys for Respondents

[redacted] GIBSON
125 N. Garnett Street
Henderson, North Carolina

BENNETT H. PERRY, JR.
Law Building
Henderson, North Carolina

Of Counsel